



**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

**March 28, 2023 at 9:30 a.m.**

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

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UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

March 28, 2023 at 9:30 a.m.

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1. [18-24516](#)-C-13 DEBRA CLARKE MOTION TO SET SECURED CLAIM OF  
[GC-1](#) Julius Cherry CAPITAL ONE AUTO FINANCE  
1-25-23 [[43](#)]

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

**The Motion to Value is granted.**

The debtor filed this Motion seeking to value the portion of Capital One Auto Finance's ("Creditor") claim secured by the debtor's property commonly known as 2017 Ford Fiesta Hatchback (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$14,793.00. Declaration, Dckt. 45.

**DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred on March, 2018, which is less than 910 days prior to filing of the petition. 11 U.S.C. § 1325(a)(9) (hanging paragraph). However, debtor is seeking the value of optional insurance obtained at the time the car was purchased to be excluded from the secured claim of Creditor. See In re Jones, 583 B.R. 749, 755 (Bankr. W.D. Wash. 2018).

The Chapter 13 Trustee filed an opposition (dkt. 52) on March 6, 2023. The trustee represents that he has already disbursed \$15,602.27 in principal and \$2,635.62 in interest to AIS portfolio services and an order would need to provide language that AIS Portfolio Services is allowed the amount that Trustee has already paid and disbursed.

Upon review of the record, the court finds the value of the Property is \$14,793.00. The optional insurance obtained at the time of purchase is excluded from Creditor's secured claim. Therefore, Creditor's secured claim is determined to be \$14,793.00. 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 Capital One Auto Finance ("Creditor") secured by property commonly known as 2017 Ford Fiesta Hatchback (the "Property") is determined to be a secured claim in the amount of \$14,793.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. Debtor's counsel shall prepare an appropriate order and 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.

2. [23-20020](#)-C-13 LARRY BUTLER  
[RDG](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-27-23 [[26](#)]

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

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

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

1. Debtor failed to appear at the 341 Meeting of Creditors held on February 23, 2023;
2. Debtor has failed to provide his Federal and state income tax returns and 60 days of employer payment advices;
3. Debtor has failed to file a credit counseling certificate;
4. Plan does not provide a dividend to general unsecured creditors and trustee is unable to determine if plan passes the liquidation test;
5. Debtor inappropriately included the payment of a class 1 creditor in his Schedule J deductions;
6. The plan is not feasible; and
7. The plan proposes 24 months instead of the correct 3 year commitment period.

**DISCUSSION**

A review of the docket shows that the debtor appeared at the continued 341 meeting held on March 9, 2023.

However, the debtor has not provided the trustee with all required pay advices. 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). Nor has the debtor provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has non-exempt assets totaling \$13,400.00. The plan provides for a zero percent dividend to unsecured claims, which is less than

the 58% percent dividend necessary to meet the liquidation test. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

The debtor's plan proposes a 24 month plan rather than 36 months. That is cause to deny confirmation. 11 U.S.C. § 1325(b)(1).

That is reason to deny confirmation. Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, 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.

3. [22-22755](#)-C-13 SANO HAR LAL  
[TAM](#)-1 Thomas Moore

MOTION TO CONFIRM PLAN  
1-26-23 [[25](#)]

**Final Ruling:** No appearance at the March 28, 2023 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 60 days' notice was provided. Dkt. 33.

**The Motion to Confirm is denied as moot.**

On March 17, the debtor filed a new proposed plan. Filing a new plan is a de facto withdrawal of the pending plan. Therefore, the Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

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

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

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

**IT IS ORDERED** that the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

**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 39 days' notice was provided. Dkt. 47.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 45) filed on February 17, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 50) on March 8, 2023, opposing confirmation on the following grounds:

1. The plan does not provide for arrears for four Class 1 creditors; and
2. The plan misclassifies creditors and is not feasible.

Creditor, Coastal Capital Group LLC, filed an Opposition (Dkt. 53) on March 9, 2023, opposing confirmation on the following grounds:

1. The plan is not feasible.

**DISCUSSION**

The plan mathematically requires a payment of \$8,608.10 per month, which is greater than the proposed payments.

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

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, Christopher Clemons, 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.

**Final Ruling:** No appearance at the March 28, 2023 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 119.

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

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

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

No opposition to the Motion has been filed.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, the Modified Chapter 13 Plan (Dkt. 114) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

6. [23-20061](#)-C-13 DEBRA THOMPSON  
[PGM](#)-2 Peter Macaluso

MOTION TO VALUE COLLATERAL OF  
WESTLAKE FINANCIAL SERVICES  
2-20-23 [[33](#)]

Thru #9

**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 36 days' notice was provided. Dkt. 37.

**The Motion to Value is ~~xxxxxxxx~~**

The debtor filed this Motion seeking to value the portion of Westlake Financial Services c/o Peritus Portfolio Services' ("Creditor") claim secured by the debtor's property commonly known as 2010 Mercedes-Benz C350 Class (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was 4,909.00. Declaration, Dckt. 35. The creditor has objected to the valuation of the vehicle in its objection to confirmation below. Dckt. 51.

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

**DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred on August 8, 2019, which is more than 910 days prior to filing of the petition. 11 U.S.C. § 1325(a)(9).

At 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 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 Westlake Financial

Services c/o Peritus Portfolio Services ("Creditor") secured by property commonly known as 2010 Mercedes-Benz C350 Class (the "Property") is xxxxxxxx

7. [23-20061](#)-C-13 DEBRA THOMPSON  
[PGM](#)-3 Peter Macaluso

MOTION TO VALUE COLLATERAL OF  
NPRTO CALIFORNIA, LLC  
2-21-23 [[38](#)]

**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 35 days' notice was provided. Dkt. 42.

**The Motion to Value is granted.**

The debtor filed this Motion seeking to value the portion of NPRTO California, LLC's ("Creditor") claim secured by the debtor's furniture, including a bunkbed, mattress, futon and chest(the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$300.00. Declaration, Dckt. 41.

**DISCUSSION**

Upon review of the record, the court finds the value of the Property is 300.00. There are no senior liens encumbering the Property. Therefore, Creditor's secured claim is determined to be \$300.00. 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 NPRTO California, LLC("Creditor") secured by furniture, including a bunkbed, mattress, futon and chest(the "Property") is determined to be a secured claim in the amount of \$300.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

8. [23-20061](#)-C-13 DEBRA THOMPSON  
[RDG](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-27-23 [[47](#)]

**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. Dkt. 50.

**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. Plan relies on motions valuing collateral that have not yet been ruled on; and
2. The plan is not feasible.

**DISCUSSION**

The plan proposes valuing the secured claims of Westlake Financial Services and NPRTO California, LLC. Before the court enters an order valuing that secured claim, the plan's feasibility is uncertain.

The plan mathematically requires either a higher payment or a longer term of commitment.

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

That is reason to deny confirmation. Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

9. [23-20061](#)-C-13 DEBRA THOMPSON  
[RDW](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY PERITUS PORTFOLIO  
SERVICES II, LLC  
3-2-23 [[51](#)]

**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 26 days' notice was provided. Dkt. 55.

**The Objection to Confirmation of Plan is xxxxxxx**

Creditor Peritus Portfolio Services LLC as servicer for Westlake Financial Services ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor lacks the required income to make plan payments;
2. Debtor's proposed interest rate to be paid on creditor's claim is too low; and
3. Debtor's proposed valuation of the vehicle is too low.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on March 14, 2023. Dkt. 58. Debtor agrees with creditor's issue on the interest rate and will increase the interest rate to 9.75%. However, debtor continues to believe that the valuation of the vehicle is correct and asserts that the debtor's schedules show debtor will be able to make the plan payments.

**DISCUSSION**

Creditor opposes confirmation on the basis that the plan proposes paying its claim at six (6.0) percent interest. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Normally, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 7.75%, plus a 1.25% risk adjustment, for a 9.00% interest rate. Here, the debtor has agreed to set the interest rate at prime plus 2%, and given this, the court

agrees and sets the interest rate at 9.75%.

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

At 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 Debra Thompson, 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 **xxxxxxxxxx**

10. [23-20061](#)-C-13 DEBRA THOMPSON  
[SKI](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY EXETER FINANCE LLC  
1-30-23 [[21](#)]

**Final Ruling:** No appearance at the March 28, 2023 hearing is required.  
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The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 57 days' notice was provided. Dkt. 25.

**The Objection to Confirmation of Plan is overruled as moot.**

Creditor Exeter Finance LLC ("Creditor") filed this objection on January 30, 2023. The parties filed a stipulation (dkt. 43) on February 23, 2023 resolving creditor's issues for objecting and an order (dkt. 46) was entered on February 24, 2023.

The Objection is resolved and overruled as moot.

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

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

The Objection to the Chapter 13 Plan filed by Exeter Finance LLC, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled as moot.

11. [18-22662](#)-C-13 RAJINDAR SINGH  
[RDG](#)-3 Peter Macaluso

MOTION TO RECONVERT CASE FROM  
CHAPTER 13 TO CHAPTER 7  
3-10-23 [[133](#)]

**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 18 days' notice was provided. Dkt. 136.

**The Motion to reconvert case to Chapter 7 is ~~xxxxxxx~~**

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for reconverting to Chapter 7 exists because the debtor has not made a payment to the Trustee since August 4, 2022.

The Motion also argues debtor is \$13,350 delinquent in plan payments, which is supported by declaration. Dkt. 135.

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

The debtor filed an opposition (dkt. 137) on March 21, 2023 requesting a continuance of the matter because debtor's counsel has not been able to assess the case and prepare a new plan.

At 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 Motion to reconvert the Chapter 13  
case to Chapter 7 filed by the Chapter 13  
Trustee, Russell Greer, having been presented  
to the court, and upon review of the  
pleadings, evidence, arguments of counsel, and  
good cause appearing,

**IT IS ORDERED** that the Motion to  
Reconvert the case to Chapter 7 from Chapter  
13 is ~~xxxxxxxxx~~

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 54 days' notice was provided. Dkt. 99.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the Second Amended Chapter 13 Plan (Dkt. 95) filed on February 2, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 104) on March 8, 2023, opposing confirmation on the following grounds:

1. Plan is not feasible and has not been proposed in good faith;
2. Plan relies on a loan modification but there is no motion set for a hearing;
3. Plan improperly modifies the rights of a holder of a secured claim secured only by a security interest in the debtor's principal residence; and
4. Plan fails the liquidation test.

Creditor, Deutsche Bank National Trust Company, as Trustee for Harbor View Mortgage Loan Pass-Through Certificates, Series 2006-3 (Creditor), filed an opposition (Dkt. 107) on March 14, 2023, opposing confirmation on the following grounds:

1. Plan does not provide for Creditors claim for prepetition arrears in the amount of \$110,146.56; and
2. The plan is not feasible.

Debtor filed a response (Dkt. 109) on March 16, 2023. Debtor acknowledges the defeceincies in the plan and proposes addressing the concerns of the Chapter 13 Trustee and Creditor in the order confirming.

**DISCUSSION**

The plan mathematically requires a payment of \$4,525.00 per month, which is greater than the proposed payments.

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

The plan proposes a loan modification with Deutsche/Nationstar. Before the court enters an order incurring or modifying debt, the plan's feasibility is uncertain.

The non-standard provisions in Seciton 7.02 are an improper modification of a claim secured only by a security interest in real property that is the debtor's principal residence. That is reason to deny confirmation. 11 U.S.C. § 1322(b)(2).

The debtor has non-exempt assets totaling \$22,697.00. The plan provides for a 100 percent dividend to unsecured claims, but does not include the necessary interest at the federal judgement rate to meet the liquidation test. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

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

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

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

CONTINUED MOTION FOR SANCTIONS  
FOR VIOLATION OF THE AUTOMATIC  
STAY  
2-7-23 [[34](#)]

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkt. 38.

**The Motion for Sanctions for Violation of the Automatic Stay is xxxxxx.**

The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Debtor, Amrit Lal ("Movant"). The claims are asserted against CFG Merchant Solutions LLC ("Respondent").

**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. 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 statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Sternberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

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FN.1. 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.  
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Attorneys' fees may be recovered for work involved in bringing about an end to the stay violation and for pursuing an award of damages. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor

unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g) (2).

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151-52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

## REVIEW OF MOTION

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

- A. On November 15, 2022, respondent filed a complaint against the debtor in the State of New York, County of Kings;
- B. On December 15, 2022, respondent filed a proof of claim (Claim No. 5-1) in the amount of \$51,915.40;
- C. On January 31, 2023, respondent through its attorney issued a garnishment against movant's sole prop business bank account with Bank of America (BoFA), which BoFA then restricted and later debited \$12,795.80 from;

## Review of Evidence

Movant has provided the Declaration of Amrit Lal in support of the Motion. Dkt. 37. The Declaration asserts that because of respondent's actions garnishing his bank account and not responding to him and his attorney's efforts to rectify the situation he has not been able to sleep and is not doing well emotionally. Movant has also provided the notice of garnishment from BoFA and a copy of the complaint.

At the prior hearing on February 21, 2023, the court set a hearing for damages pursuant to 11 U.S.C. § 362(k) for March 28, 2023. Movant was required to file evidence supporting the motion by March 14, 2023 and opposition evidence was due March 21, 2023.

## DISCUSSION

At 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 Motion for Sanctions for Violation of the

Automatic Stay by Amrit Lal 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 March 28, 2023 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 177.

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 Modofy Plan is granted.**

The debtors 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 debtors, Brandon and Tracy McBroom, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, the Modified Chapter 13 Plan (Dkt. 176) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtors 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.

15. [23-20393](#)-C-13 JOSE HERNANDEZ  
[KL-1](#) Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-14-23 [[11](#)]

DEBTOR DISMISSED: 3/7/23  
WILMINGTON SAVINGS FUND  
SOCIETY, FSB VS.

**Final Ruling:** No appearance at the March 28, 2023 hearing is required.  
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The case having previously been dismissed, the Motion for Relief from Automatic Stay is dismissed 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 automatic stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.