

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

April 5, 2022 at 1:30 p.m.

1.	18-25209 -C-13	ROMANA HERRERA	MOTION TO REFINANCE
	PGM -2	Peter Macaluso	3-1-22 [70]

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 35 days' notice was provided. Dkt. 74.

The Motion to Refinance Debt is xxxxxx.

Romana Herrera, the debtor, filed this Motion seeking authority to refinance the mortgage on the property located at 5717 Nona Way, Sacramento, CA. Debtor proposes using the proceeds from the refinanced loan to payoff the plan at 100%.

The proposed financing is in the principal amount of \$234,025, paid at 3.875% interest over a 30 year term. Monthly payments are proposed to be \$1,545 for years 1 through 11, and \$1,393 for years 12 through 30.

The Chapter 13 trustee opposes the motion because the proceeds of \$15,000, which are indicated in the exhibits attached to the debtor's motion, is insufficient to pay the full amount of approximately \$55,800 that is needed to pay 100% to the general unsecured creditors.

The court finds that the proposed credit, based on the unique facts and circumstances of this case is xxxxxx

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 Refinance filed by the debtor, Romana Herrera, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxxxx

Final Ruling: No appearance at the April 5, 2022 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 57 days' notice was provided. Dkt. 62.

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

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 60) filed on February 7, 2022.

No opposition to the Motion has been filed.

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

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

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

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

IT IS ORDERED that the Motion is granted, the debtor's Chapter 13 Plan (Dkt. 60) 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.

3. [21-22614](#)-C-13 HENRY REED
[RDG](#)-1 Jason Vogelpohl

CONTINUED MOTION TO DISMISS
CASE
1-10-22 [[70](#)]

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 15 days' notice was provided. Dkt. 73.

The Motion to Dismiss is XXXXXX

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor has not filed an amended plan since the court denied confirmation of the first two proposed plans.

The debtor thereafter filed Opposition representing a new plan would be filed, and that the delay was due to negotiations with a secured creditor. Dkt. 75. A review of the docket shows the debtor filed a Motion To Confirm setting an April 26, 2022 confirmation hearing. Dkt. 110.

DISCUSSION

At the prior hearing the court granted a continuance to allow the debtor to notice a hearing for confirmation on April 26, 2022 and to get current on the plan payments. A review of the docket shows that a confirmation hearing has been set. The docket further shows that the trustee has not filed any further pleadings.

At the hearing, XXXXXX

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

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

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

IT IS ORDERED XXXXXX

Final Ruling: No appearance at the April 5, 2022 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 54 days' notice was provided. Dkt. 67.

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 debtors filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 66) filed on February 10, 2022.

No opposition to the Motion has been filed.

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

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

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

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

IT IS ORDERED that the Motion is granted, the debtor's Chapter 13 Plan (Dkt. 66) 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.

5. [22-20138](#)-C-13 VASILIOS TSIGARIS OBJECTION TO CONFIRMATION OF
[JHK](#)-1 Mark Caraska PLAN BY SANTANDER CONSUMER USA
INC.
2-22-22 [[22](#)]

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 42 days' notice was provided. Dkt. 25.

The Objection to Confirmation of Plan is xxxxxxx.

Creditor, Santander Consumer USA Inc. ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan fails to provide any treatment of Creditor's claim with regards to the contract, and the Creditor's interest in the vehicle is not protected through the plan.
2. The plan does not state that Creditor does not have to release its lien upon completion unless the debt is paid in full because there is a non-filing co-debtor on the contract and title to the vehicle.

DEBTOR'S OPPOSITION

Debtor has not filed any opposition.

DISCUSSION

At the hearing, xxxxxxxxxxxx

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 Santander Consumer USA Inc., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is xxxxxxx

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. 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. The plan is not feasible because the debtor has not filed schedules for business income and expenses, the debtor's 2021 tax returns have not been provided to the Trustee, a secured claim filed by Santander Consumer USA is not provided for in the plan, and because the debtor's monthly payment amount is insufficient to pay all priority claims and 1% to the general unsecured creditors.
2. The plan states that the agreed upon attorney's fee does not include judicial lien avoidances and relief from stay actions, which is contradictory to the signed Rights and Responsibilities document and are included in the "No Look Fee."
3. The debtor has filed inconsistent documents that show that the debtor's household includes either 4 or 5 people, and without an accurate representation the Trustee is unable to determine whether all the projected disposable income of the debtor is provided for in the plan.

DEBTOR'S OPPOSITION

The debtor has not filed an Opposition.

DISCUSSION

The debtor has not filed all business documents including:

- A. The attachment to Schedule I for business income and expenses, and
- B. Tax returns.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

The plan mathematically requires a payment of at least \$4,730 per month, which is greater than the proposed \$4,459.86 payment.

The debtor further, has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed, and whether the secured claim of Santander Consumer USA is provided for in the plan, and whether the debtor's household consists of 4 or 5 people. 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.

7. [17-28150](#)-C-13 ANGELA BRACE
[PGM](#)-4 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
3-3-22 [[83](#)]

Final Ruling: No appearance at the April 5, 2022 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 33 days' notice was provided. Dkt. 87.

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.

Counsel for the debtors filed this Motion seeking additional compensation, beyond the fixed fee approved in connection with plan confirmation pursuant to Local Bankruptcy Rule 2016-1(c), for substantial and unanticipated work performed.

Applicant requests fees in the amount of \$810.00.

DISCUSSION

The post-confirmation services performed constitute substantial and unanticipated work for the benefit of the Estate, the 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 \$810.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("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 Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, a professional employed by the Chapter 13 debtor,
Angela M. Brace,

Fees in the amount of \$810.00,

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

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

Final Ruling: No appearance at the April 5, 2022 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 35 days' notice was provided. Dkt. 100.

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

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 99) filed on March 1, 2022.

The opposition to the Motion filed by the Trustee has been withdrawn. No other 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, Gunvant Mangubhai Patel, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Chapter 13 Plan (Dkt. 99) 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.

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 47 days' notice was provided. Dkt. 35.

The Motion to Confirm is ~~xxxxxxx~~.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 28) filed on February 14, 2022.

The Chapter 13 Trustee ("Trustee") filed an Opposition (Dkt. 39) on March 15, 2022.

The Debtor filed a response (Dkt. 42) to the Trustee's opposition on March 21, 2022.

The Trustee filed a response (Dkt. 44) to the Debtor's response on March 29, 2022, responding to the Debtor's response as follows:

1. The plan still does not provide for the Internal Revenue Service's priority claim and even with the \$48 increase in the monthly payment the plan payments would have to increase by at least \$119 a month in months 5 through 60 in order to pay the secured and priority claims and a zero percent dividend to general unsecured creditors, and
2. Trustee still requests Debtor's pay advice from her second job, which debtor indicated her first paycheck would be received on March 25, 2022.

DISCUSSION

At the hearing, ~~xxxxxxx~~

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

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

The Motion to Confirm filed by the debtor, Stacy Marie Herman, 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~~

10. [21-20094](#)-C-13 MARK PARDO AND KATHLEEN MOTION TO MODIFY PLAN
[PLC](#)-7 RAPISURA-PARDO 2-17-22 [[64](#)]
Peter Cianchetta

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 42 days' notice was provided. Dkt. 71.

The Motion to Modify is ~~xxxxxxx~~.

The debtors filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 66) filed on March 17, 2022.

The Chapter 13 Trustee ("Trustee") filed an Opposition (Dkt. 72) on March 8, 2022, opposing confirmation on the following grounds:

1. All sums required by the plan have not been paid,
2. The plan is not feasible because the plan provides for two Class 2 creditors with secured claims that had not filed a claim, and the debtors failed to file a claim on behalf of the creditors in time,
3. The plan fails to state the monthly dividend payable for attorney fees and according to the Trustee the balance of the attorney fees total \$2,039.06, and
4. The plan is not proposed in good faith because the plan omits a provision that was included in the order confirming the prior plan that stated that confirmation was contingent upon the debtors providing copies of their annual Profit and Loss Statements, and their Federal and State income tax returns, from their business on or before April 30 of each year.

DISCUSSION

At the hearing, ~~xxxxxxx~~

Upon review of the record, the court finds the plan ~~xxxxxxxxx~~

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, Mark Angel Anthony Pardo and Kathleen Ortiz Rapisura-Pardo, 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 ~~xxxxxxxx~~