



UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

April 11, 2023 at 1:30 p.m.

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
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Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

April 11, 2023 at 1:30 p.m.

1.	20-23327 -C-13	DOUGLAS BRAUNER	MOTION TO SELL
	WW-5	Mark Wolff	3-14-23 [78]

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 28 days' notice was provided. Dkt. 82.

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

<p>The Motion to Sell is granted.</p>
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Debtor, Douglas Brauner, filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 2301 El Camino Avenue, Sacramento, CA ("Property").

The proposed purchaser of the Property is Safa Marwah LLC, and the proposed purchase price is \$715,000.00.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will allow debtor to pay in full all claims filed in the case.

Broker's Commission

Movant has estimated that a four percent broker's commission from the

sale of the Property will equal approximately \$28,600.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than four percent commission.

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

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

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

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

IT IS FURTHER ORDERED that Movant is authorized to pay a real estate broker's commission in an amount not more than four percent of the actual purchase price upon consummation of the sale.

2. [20-23327](#)-C-13 DOUGLAS BRAUNER
[WW-6](#) Mark Wolff

MOTION TO EMPLOY CENTURY 21
SELECT REAL ESTATE, INC AS
REALTOR(S)
3-14-23 [[83](#)]

Final Ruling: No appearance at the April 11, 2023 hearing is required.

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

Debtor, Douglas Brauner, seeks to employ Daniel Mueller and Century 21 Select Real Estate, Inc. as a real estate agent for the estate pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330.

Debtor argues the real estate agent is necessary to sell the property commonly known as 2301 El Camino Avenue, Sacramento, CA.

The Declaration of Daniel Mueller filed in support of the Motion attests to the real estate agent's disinterestedness and experience. Dkt. 85.

DISCUSSION

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of the real estate agent, considering the declaration demonstrating that the real estate agent does not hold an

adverse interest to the Estate and is a disinterested persons, the nature and scope of the services to be provided, the court grants the Motion on the terms and conditions set forth in the Exclusive Right to Represent Owner for Sale or Lease of Real Property filed as Exhibit C, Dkt. 86. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by Douglas Brauner 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 Employ is granted, and Douglas Brauner is authorized to employ Daniel Mueller and Century 21 Select Real Estate, Inc. as a real estate agent for the estate on the terms and conditions as set forth in the Exclusive Right to Represent Owner for Sale or Lease of Real Property filed as Exhibit C, Dkt. 86.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

3. [18-27038](#)-C-13 JUAN/MARICELA CARRANZA
[MRL](#)-4 Mikalah Liviakis

MOTION FOR COMPENSATION FOR
MIKALAH RAYMOND LIVIAKIS,
DEBTORS ATTORNEY(S)
3-13-23 [[59](#)]

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 28 days' notice was provided. Dckt. 63.

The Motion for Allowance of Professional Fees is granted.

Counsel for the debtor 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.

Fees are requested for the period February 1, 2023 through March 12, 2023. Applicant requests fees in the amount of \$1,725.00.

DISCUSSION

The unique facts surrounding the case, including obtaining the approval of debtor's compromise with National Railroad Passenger Corporation dba Amtrak and Janico Building Services, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,725.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

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

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

Applicant, a professional employed by the Chapter 13 debtors, Juan and Maricela Carranza,

Fees in the amount of \$1,725.00

Expenses in the amount of \$0,

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 11, 2023 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 42 days' notice was provided. Dkt. 56.

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

The Motion to Confirm is granted.

The debtors filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 54) filed on February 28, 2023.

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 debtors, Derek and Denielle Mills, 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 (Dkt. 54) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), 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.

5. [23-20061](#)-C-13 DEBRA THOMPSON
[PGM](#)-2 Peter Macaluso

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

Thru #6

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 ~~XXXXXXXXXX~~

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 prior hearing the parties represented they had stipulated to the relevant terms of the motion.

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 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 **xxxxxxx**

6. [23-20061](#)-C-13 DEBRA THOMPSON
[PGM](#)-3 Peter Macaluso

CONTINUED 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.

7. [18-22662](#)-C-13 RAJINDAR SINGH CONTINUED MOTION TO RECONVERT
[RDG](#)-3 Peter Macaluso 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.

The motion was continued to allow the debtor time to file a motion to modify plan and sell property.

A review of the docket shows that a new plan and a motion to confirm were filed on April 5, 2023. Dkts. 141 & 144.

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 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 xxxxxxxxxx

Final Ruling: No appearance at the April 11, 2023 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 46 days' notice was provided. Dkt. 25.

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 Amended Chapter 13 Plan (Dkt. 22) filed on February 24, 2023.

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, Francisco Blandon, 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 (Dkt. 22) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), 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.

9. [23-20288](#)-C-13 FRANCIS/KATHLEEN CADLE OBJECTION TO CONFIRMATION OF
[RDG-1](#) Julius Cherry PLAN BY RUSSELL D. GREER
3-13-23 [[15](#)]

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. 18.

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. Debtors have not filed the Attachment to Schedule I that provides for debtors' business income and expenses;
2. Debtors have not provided Lyft Account Statements for the months July 2022 through November 2022;
3. The plan does not propose a specific plan term;
4. The plan fails to comply with § 1325(b)(4)(A) and § 1322(d); and
5. The plan is not feasible.

DISCUSSION

The debtor has not filed all business documents including the Attachment to Schedule I. 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).

Because the plan does not provide for a specific period of time to complete. That is reason to deny confirmation. 11 U.S.C. §§ 1325(b)(4) & 1322(d).

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.

10. [23-20393](#)-C-13 JOSE HERNANDEZ
[KL-1](#) Pro Se

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

DEBTOR DISMISSED: 03/07/2023

WILMINGTON SAVINGS FUND
SOCIETY, FSB VS.

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 43 days' notice was provided. Dkt. 17.

The Motion for Relief from the Automatic Stay is xxxxxx.

Creditor, Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-D ("Movant"), filed this Motion seeking in rem relief from the automatic stay as to the debtor's property at 8216 Jose Bento Way, Sacramento, CA (the "Property").

Movant argues cause exists pursuant to 11 U.S.C. § 362(d)(4) because the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property. Movant represents that the debtor is 6 years behind in mortgage payments for a total of \$174,107.39 in prepetition arrears. Movant asserts that the filing of multiple cases over several years suffices to show that the present case is part of a scheme to shield the Property from foreclosure. Movant further asserts that this case was filed in pro-se within 10 days of dismissal of the prior case without any intent to reorganize because debtor failed to file a plan and schedules.

Movant contends that the purpose of the scheme was to delay, hinder or defraud because the debtor's consecutive filings show the debtor did not intend to seriously take advantage of the relief of the Code. Movant further contends that debtor failed to abide by the terms of previous confirmed plans and failed to take advantage of loan modification opportunities that were available to him, which shows that debtor was only just buying time and living rent free at the Property.

Finally, Movant argues that the three filings in the last seven years satisfies the multiple filing requirements for in rem relief.

DISCUSSION

The debtor's case was dismissed March 7, 2023 Therefore, as of March 7, 2023, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by

operation of law, to Debtor.

The court has also been asked to find cause exists pursuant to 11 U.S.C. § 362(d)(4) because the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property.

At the hearing XXXXXXXX

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 requeststhat the court grant relief from the Rule as adopted by the United States Supreme 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 Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-D ("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 above relief pursuant to 11 U.S.C. § 362(d)(4) is XXXXXXXX

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