

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

April 20, 2021 at 1:30 p.m.

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

1.	20-24108 -C-13	LONNIE/MARIA FINK	CONTINUED OBJECTION TO CLAIM OF
	SLE -1	Steele Lanphier	INTERNAL REVENUE SERVICE, CLAIM
			NUMBER 5-1
			1-29-21 [41]

Thru #2

No Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 39 days' notice was provided. Dkt. 44.

The Objection to the Proof of Claim is XXXXXXXX

The debtors filed this Objection to Proof of Claim, No. 5 (the "POC"), filed by the Internal Revenue Service. The POC represents that the IRS holds a \$147,356.95 claim, of which \$21,425.00 is a secured claim.

The debtors seek a determination that the entire claim is a general unsecured non-priority debt. The debtors argue that:

(1) the debt underlying the POC is a tax debt from 2011, which was discharged in the debtors' prior Chapter 7 case, no. 16-23968.

(2) the IRS never perfected its lien because there was never a demand for payment as required by 26 U.S.C. § 6321.

DISCUSSION

During the prior hearing the debtors' counsel requested additional time to investigate whether the IRS' claim had been surrendered.

At the hearing, the parties reported XXXXXXXXXXXXXXXX

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A review of the docket in the debtors' prior case shows a \$226,843.49 claim of the IRS for 2010-2011 taxes that was scheduled as an unsecured debt, case, no. 16-23968, Dkt. 1. If the debtors scheduled the debt, it does not seem possible the IRS never made a demand as the debtors now suggest.

The POC also indicates the lien for the IRS' claim was recorded April 23, 2014, which was before the prior case. A chapter 7 discharge would not extinguish the IRS' lien.

Additionally, it is questionable whether the tax debt was dischargeable at all, as 11 U.S.C. § 523(a)(1)(A) provides that a Chapter 7 discharge does not apply to a debt specified in 11 U.S.C. § 507(a)(8), which is a debt for taxes due within 3 years prior to filing the petition. The period commences when the taxes are last due, including extensions. Also, the applicable time period is suspended for any period which the stay of proceedings was in effect in a prior bankruptcy case, plus 90 days.

The debtors' prior bankruptcy cases include:

13-28506	filed 6/25/2013	dismissed 12/6/2013
15-29729	filed 12/19/2015	dismissed 5/18/2016
16-23968	filed 6/18/2016	dismissed 10/31/2016

Adding the 164 days the first case was pending, plus 90 days, and the 151 days the second case was pending, plus 90 days, and 3 years results in a 1,590 period. 1,590 days from the last day the taxes were presumably due, April 15, 2012, puts the date at August 22, 2016 and leaves the 2011 taxes within the ambits of 11 U.S.C. § 507(a)(8) as non-dischargeable debt.

The Objection is **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 Objection to Claim filed in this case by the debtors 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 to Proof of Claim Number 5 of the Internal Revenue Service is **xxxxxxx**

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 38.

The Motion to Confirm is XXXXXXXX

The debtors filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 37) filed on January 20, 2021.

The trustee filed an Opposition (Dkt. 47) on February 16, 2021, opposing confirmation on the following grounds:

1. The Internal Revenue Service has filed a proof of claim on November 4, 2020 with a secured amount of \$21,425.00. The debtors' plan does not provide for this secured claim.
2. Debtor Lonnie Fink filed a change of address on January 15, 2021. If the debtors are residing in separate households, they need to file Official Form 106J-2, Expenses for Separate Household.

DISCUSSION

A review of the docket shows Official Form 106J-2, Expenses for Separate Household has yet to be filed. Additionally, the debtors' objection to the proof of claim filed by the IRS is pending.

At the hearing, XXXXXXXXXXXXXXXX

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

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

The Motion to Confirm filed by the debtors, Lonnie Fink and Maria Luz Fink, 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

3. [20-24912](#)-C-13 JAVIER CASTELLANOS AND CONTINUED OBJECTION TO CLAIM OF
RJ-4 ALEJANDRA ALCANTAR U.S. BANK NATIONAL ASSOCIATION,
Richard Jare CLAIM NUMBER 15
1-11-21 [[49](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (1) procedure which requires 44 days' notice. The Proof of Service shows that 57 days' notice was provided. Dkt. 50.

The Objection to the Proof of Claim is XXXXXXXXXX

The debtors filed this Objection to Proof of Claim, No. 15, filed by U.S. Bank National Association seeking a determination that the asserted prepetition arrearage of \$14,111.78 is no longer owing because a loan modification incorporated that arrearage into the subordinate partial claim deed of trust.

The subordinate partial claim deed of trust (Dkt. 53) is a HUD loan executed October 27, 2020, and recorded November 3, 2020. The debtor's declaration (Dkt. 56) attests that the loan was a COVID-19 modification made to bring the debtors current.

However, the docket does not reflect that the debtors sought court authority to incur post-petition debt. Also, stay relief was not granted for the purpose of allowing a new lien to be recorded.

DISCUSSION

The parties requested a continuance at the prior hearing to investigate further whether a loan modification was executed.

At the hearing, the parties reported XXXXXXXXXXXXXXXX

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

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

The Objection to Claim filed in this case by the debtors 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 to Proof of Claim Number 15 of U.S. Bank National Association is XXXXXXXXXX

Final Ruling: No appearance at the April 20, 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 35 days' notice was provided. Dkt. 104.

**The hearing on the Motion to Modify Plan is continued to
May 11, 2021 at 1:30 p.m.**

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 103) filed on February 2, 2021.

The trustee filed an Opposition (Dkt. 105) on February 17, 2021, opposing confirmation on the following grounds:

1. Section 1.02 of the plan indicates there are no additional provisions, which conflicts with the presence of additional provisions.
2. The plan mathematically requires a \$4,218.25 monthly payment, which is greater than the proposed \$4,000.00 monthly payment beginning February 2021.
3. The debtor has not filed supplemental Schedules I and J.
4. The additional provisions may be impermissibly modifying Carrington Mortgage Service's rights by forcing Carrington Mortgage Service to receive adequate protection payments rather than its contractual payment.
5. The plan proposes a loan modification, but the debtor has not filed a motion for authority to incur debt.

DISCUSSION

The outcome of this Motion depends on the debtor obtaining a loan modification, and the debtor has now filed a motion seeking approval for that loan modification set for May 11, 2021 hearing. Therefore the court shall continue this Motion to be heard alongside the motion for approval of loan modification.

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, Antoinette Michelle Woods, 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 hearing on the Motion to Modify Plan is continued to May 11, 2021 at 1:30 p.m.

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. 88.

The Motion to Modify is ~~XXXXXXXX~~

The debtor filed this Motion seeking to confirm the Third Modified Chapter 13 Plan (Dkt. 86) filed on March 4, 2021.

The trustee filed an Opposition (Dkt. 89) on March 30, 2021, opposing confirmation on the following grounds:

1. Debtor's Third Modified Chapter 13 Plan provides for total attorney fees of \$11,300.76 of which \$1,590.00 was paid prior to filing and a balance of \$9,710.76 is due through the plan. The trustee's calculations show attorney fees due total \$11,863.00 of which \$1,590.00 was paid prior to filing and a balance of \$10,273.00 is due through the plan.

Additionally, the last plan payment was made March 22, 2021, and the total balance on hand in debtor's case through March 29, 2021 is only \$7,490.58. If debtor's plan is to be confirmed on April 20, 2021, there will not be sufficient funds in debtor's account to disburse a payment of \$9,710.76 for the debtor's attorney fees.

2. The dividend proposed to pay the IRS' claim will take 58 months to pay the claim in full. Because the plan provides for attorney fees to be paid in full before Class 2 claims, the monthly dividend would need to be increased to \$510.88 for the plan to complete timely.

DEBTOR'S REPLY

The debtor filed a Reply on April 2, 2021. Dkt. 92. Debtor's counsel reports the parties have agreed the plan would be feasible if the attorney fees were reduced to \$8,294.14, and if the IRS' claim was paid \$510.88 monthly at 5%.

DISCUSSION

At the hearing, ~~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 debtor, Kathleen Marslek, 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 **xxxxxxxxxxxxx**

6. [20-22830](#)-C-13 DAMION HRIBIK
[RDG](#)-2 Gary Fraley

OBJECTION TO CLAIM OF
SCHOOLSFIRST FCU, CLAIM NUMBER
10
3-18-21 [[45](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 33 days' notice was provided. Dkt. 47.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 10, filed by SchoolsFirst FCU was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is August 10, 2020. Notice of Bankruptcy Filing and Deadlines, Dkt. 12. The Proof of Claim subject to this Objection was filed February 16, 2021.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. 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 to Proof of Claim Number 10 of SchoolsFirst FCU is sustained, and the claim is disallowed in its entirety.

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. 15.

The Motion to Extend the Automatic Stay is granted.

Stephanie Muzzi ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on February 25, 2021, after Debtor fell delinquent in plan payments. Order, Bankr. E.D. Cal. No. 19-27105, Dkt. 105. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains her circumstances have changed because she is back to working full time. Dkt. 14.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith

under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c) (3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this 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 to Extend the Automatic Stay filed by Stephanie Muzzi 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, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c) (3) (B) for all purposes and parties, unless terminated by operation of law or further order of this court.

Thru #10

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 41 days' notice was provided. Dkt. 80.

The Motion to Confirm is ~~XXXXXXXXXX~~

The debtors filed this Motion seeking to confirm the Second Amended Chapter 13 Plan (Dkt. 66) filed on January 25, 2021.

The trustee filed an Opposition (Dkt. 86) on February 16, 2021, opposing confirmation on the following grounds:

1. The plan relies on the court valuing the secured claim of Ready Cap Lending LLC. The court has yet to enter an order valuing that claim.
2. When accounting for trustee compensation the plan mathematically requires a \$4,506.52 payment, which is less than the proposed \$4,450.00 payment in months 1 through 11.
3. The debtors list non-exempt assets of \$7,705.00. The debtors' plan must pay 32 percent (\$7,705.00 divided by general unsecured claims of \$23,962.57) to pass the liquidation test. The proposed plan provides a zero percent dividend.

DISCUSSION

The hearing on this Motion was continued to be heard alongside the debtors' Motion To Value (Dkt. 67).

At the hearing, the parties reported ~~XXXXXXXXXXXXXXXXXX~~

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, Michael Scott Saso and Jeannine Saso, 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~~

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 41 days' notice was provided. Dkt. 76.

The Motion to Value Collateral is ~~xxxxxx~~.

The debtors filed this Motion seeking to value the portion of ReadyCap Lending LLC's ("Creditor") claim, which is secured by a Deed of Trust to debtors' property commonly known as 8701 Great Court, Elk Grove, California (the "Real Property"). It is also secured by a UCC Filing Statement to certain portions of the debtors' personal property, though it is not entirely clear what personal property.

As to the Real Property, the debtors have presented evidence that its replacement value at the time of filing was \$490,000, declaration, Dkt. 73. This valuation coincides with an appraisal obtained by Creditor. The Real Property is encumbered by a first and second DOT totaling \$267,310.02, Proofs of Claim, Nos. 2-1 & 4-1. Therefore, the debtors argue there is equity of \$222,690.16 supporting the secured claim as to the Real Property.

The debtors have also presented testimony as to the value of the personal property as \$22,010.00, declaration, Dkt. 73. The personal property appears to be that used in connection with one of the debtors' Papa Murphy's businesses. The debtors valuation again coincides with an appraisal obtained by Creditor, except that the debtors argue the appraisal included personal property valued at \$10,640.00 that was used in a different business and is not Creditor's collateral.

In aggregate, the debtors argue that Creditor's secured claim should be determined to be \$244,700.16.

The Creditor's Proof of Claim, No. 6-2, asserts that the Creditor's claim is fully secured in the amount of \$255,664.66, with the collateral valued at \$533,982.00. The POC indicates the collateral is "Residential real property and business personal property." The UCC Financing Statement states that the collateral is "All personal property of Debtor of every kind and nature wherever located whether now owned or hereafter acquired . . ."

DISCUSSION

As discussed, it is not clear what personal property is the Creditor's collateral. The Motion does not identify each piece of personal property. The UCC Financing Statement states that the collateral is "all personal property," not property used in connection with any specific business. Also, the UCC Financing Statement does not state that equipment from one of the debtors' stores is included and equipment from another are excluded.

During the prior hearing the court granted a continuance to allow the debtors to negotiate with Creditor.

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 Value Collateral and Secured Claim filed by the debtors 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 Value Collateral pursuant to 11 U.S.C. § 506(a) is ~~XXXXXXXXXX~~

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 20 days' notice was provided. Dkt. 61.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Motion to Dismiss is XXXXXXXXXX

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtors have not confirmed a plan, and there is no pending motion seeking to confirm a plan.

At the prior hearing, the court continued this Motion to be heard alongside the debtors' Motion to Confirm Second Amended Plan.

At the hearing, XXXXXXXXXXXXXXXXXX

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 ("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 the Motion to Dismiss is XXXXXXX

11. [15-26244](#)-C-13 DOUGLAS GONZALES
[PGM](#)-2 Peter Macaluso

MOTION TO FILE AMENDED PROOF OF
CLAIM
3-16-21 [[121](#)]

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. 125.

The Motion to File Amended Proof of Claim is ~~xxxxxx~~.

The debtor Douglas Rolando Gonzales filed this Motion seeking to amend Proof of Claim, No. 15, which the debtor filed on behalf of creditor Sheldon Hills HOA ("Creditor"), because the Creditor is no longer doing business, has dissolved, and has no successor to the debt.

The Creditor's claim is secured by a statutory lien in the amount of \$1,201.00 for prepetition HOA fees. The Modified Plan provides for that prepetition arrearage and an ongoing postpetition payment of \$12.50 a month. Dkt. 109.

The debtor represents that to date \$835.97 in prepetition arrearages and \$512.50 in postpetition payments have been made. Because the Creditor is no longer doing business, the debtor seeks a determination that the Creditor's claim totals those amounts already paid.

DISCUSSION

The debtor's position is straight-forward: the Creditor no longer exists and will no longer accept any payments, so the Creditor's claim should be amended to disallow any portion of its claim not already paid.

However, the Motion is lacking in legal authority. The debtor has not clearly shown (1) a right of the debtor who files a proof of claim on behalf of a creditor to later amend that claim, or (2) a right to amend a proof of claim for the purpose of disallowing unpaid portions when a creditor dissolves and there is no successor in interest.

11 U.S.C. § 347 directs what happens to unclaimed funds in a Chapter 13 case. The relief the debtor seeks is essentially to bypass this process.

At the hearing, ~~xxxxxxxxxxxxxxxx~~

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to File Amended Proof of Claim filed by the debtor Douglas Rolando Gonzales 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**

Thru #13

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 29 days' notice was provided. Dkt. 15.

The Objection to Confirmation of Plan is XXXXXXX
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The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor's Disclosure of Compensation of Attorney for Debtor states representation does not include judicial lien avoidances and relief from stay actions. This is contradictory to the Rights and Responsibilities signed by the debtors and their attorney.
2. The plan does not specify whether attorney compensation will be sought through Local Bankruptcy Rule 2016-1(C) or by motion.
3. The debtor admitted at her 341 meeting that she has filed her 2020 Federal and State income tax returns and is receiving a \$1,070.00 refund, but has not yet provided a copy of those returns to the trustee.
4. The plan provides for creditor Fidelity's claim as a class 1, but that claim is for a retirement loan repayment paid direct by the debtor through an automatic deduction from her bank account. Additionally, that claim will be paid in full within 22 months.
5. The debtor's Schedule I includes a deduction of \$288.41 for mandatory contributions to retirement plans, which are actually voluntary contributions.

DISCUSSION

A review of the docket shows an Amended Disclosure of Attorney Compensation was filed which removes the language excluding judicial lien avoidances and relief from stay actions from the scope of representation.

The remaining issues to be addressed are how the debtor's attorney will be paid, whether debtor provided a copy of her 2020 tax returns, and

what the proper treatment of Fidelity's claim should be, and whether all disposable income is being provided in the plan where the debtor is making voluntary retirement contributions.

Additionally, the trustee has an Objection to certain of the debtor's exemptions set for hearing the same day as this hearing.

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 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 **xxxxxxxxxx**

Final Ruling: No appearance at the April 20, 2021 hearing is required.

The Objection has been set on Local Rule 9014-1(f) (1) procedure which requires 28 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 22.

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 Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

The Chapter 13 trustee filed this Objection to the debtor's exemptions as to (1) the debtor's interest in a WorldMark by Wyndham Timeshare using C.C.P. §704.730, and (2) the debtor's 2013 Ford Edge using C.C.P. §704.060.

The trustee opposes the exemption of the debtor's timeshare because the code section used is only for a homestead, and the timeshare is not the debtor's residence. The trustee opposes the exemption as to the debtor's vehicle because the code section used is only for personal property used in a business, and the debtor only earns wage income from her employment at the Sutter Medical Foundation.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Here, the debtor is not entitled to exempt her timeshare pursuant to C.C.P. §704.730 because it is not her residence, and the debtor is not entitled to exempt her vehicle pursuant to C.C.P. §704.060 because the vehicle is not personal property used in a business.

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 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 sustained, and the claimed exemptions for the debtor's interest in a WorldMark by Wyndham Timeshare under California Code of Civil Procedure §704.730 and for the debtor's 2013 Ford Edge under California Code of Civil Procedure §704.060 are disallowed in their entirety.

Final Ruling: No appearance at the April 20, 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 40 days' notice was provided. Dkt. 59.

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 Entry of Hardship Discharge is granted.

The debtor Shea' Yvonne Easiley ("Debtor") moves for entry of a hardship discharge because she has medical issues and can no longer work. Debtor argues she is entitled to a hardship discharge because:

1. The Debtor's medical condition and resulting financial condition is a circumstance for which the Debtor should not be justly held accountable to.
2. The value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid if the estate of the Debtor had been liquidated under Chapter 7.
3. Modification of the Debtor's plan under §1329 is not practicable given that the Debtor has no income to make the plan payments.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if-

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on

account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

DISCUSSION

Since the prior hearing the debtor filed a Supplemental Declaration (Dkt. 65) attesting that she was diagnosed with and is on medication for bipolar disorder, which condition has prevented her from working. The debtor also attests that she is ineligible for governmental assistance because she has not worked in the past year and already exhausted social security disability benefits.

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is entered for Debtor in this case.

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 Hardship Discharge filed by Shea' Yvonne Easley ("Debtor") 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 granted, and the court shall enter a "hardship" discharge pursuant to 11 U.S.C. § 1328(b) for Shea' Yvonne Easley in this case based on the Plan as performed as of the April 20, 2021, hearing date on this Motion.

Final Ruling: No appearance at the April 20, 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 29 days' notice was provided. Dkt. 37.

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 Value is granted.

The debtor filed this Motion seeking to value the portion of Ocwen Loan Servicing, LLC's ("Creditor") claim secured by the debtor's property commonly known as 6408 Trajan Drive, Orangevale, California (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$238,000.00. Declaration, Dkt. 35.

Proof of Claim, No. 2, filed by JP Morgan Chase Bank, National Association c/o Chase Records Center, evinces that there is a senior priority first deed of trust secured by the Property totaling \$284,350.25.

DISCUSSION

Upon review of the record, the court finds the value of the Property is \$238,000.00, and there are \$284,350.25 of senior liens encumbering the Property. Therefore, Creditor's secured claim is determined to be \$0 because it is completely under-collateralized. 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 Ocwen Loan Servicing, LLC ("Creditor") secured by property commonly known as 6408 Trajan Drive, Orangevale, California (the "Property") is determined to be a secured claim in the amount of \$0.00.

16. [20-24784](#)-C-13 RODERICO/JACQUELINE OBJECTION TO CLAIM OF SCHOOLS
[RDG](#)-1 BENIPAYO FINANCIAL, CLAIM NUMBER 30-1
Julius Cherry 3-18-21 [[18](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 33 days' notice was provided. Dkt. 19.

The Objection to Proof of Claim is XXXXXXXXXX

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 30, filed by Schools Financial was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is December 28, 2020. Notice of Bankruptcy Filing and Deadlines, Dkt. 10. The Proof of Claim subject to this Objection was filed February 8, 2021.

CREDITOR'S RESPONSE

Creditor SchoolsFirst Federal Credit Union filed a Response April 5, 2021. Dkt. 21. SchoolsFirst asserts that it was not aware of the debtor's bankruptcy case until January 2021 because Schools Financial and SchoolsFirst Federal Credit Union merged as of January 28, 2020, and its address was not listed correctly on Schedule D.

DISCUSSION

The Creditor filed a Response arguing the Objection should be overruled because the Creditor did not receive notice of the bankruptcy filing until January 2021, a date after the December 28, 2020, deadline had passed. But, the Creditor does not provide any legal basis for its argument.

11 U.S.C. § 502(b) (9) provides that if an objection to claim is made, the court shall determine the amount of that claim except to the extent that proof of such claim is not timely filed. The Creditor has not argued there is an applicable exception to that rule here.

Federal Rule of Bankruptcy Procedure 3002(c) (6) allows a creditor to file a motion before or after the expiration of the time to file a proof of claim seeking authority to file its claim. But, no motion has been filed here.

At the hearing, XXXXXXXXXXXXXXXXXX

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. 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 to Proof of Claim Number 30 of Schools Financial is **xxxxxxxxxx**

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 22 days' notice was provided. Dkt. 56.

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

The debtors Robert Matthew King and Allison Rae King filed this Motion seeking authority to incur new debt to lease a 2020 Ford Escape Hybrid.

The lease provides for 36 payments of \$451.15 and a down payment of \$1,750.00.

The debtors assert they will make the down payment with stimulus funds, and argue that while their car payment will be \$63 higher per month for this vehicle, the fuel savings will offset the difference.

In their deceleration the debtors explain they chose not to seek a used vehicle because they could not get financing at an interest rate below 10%. The debtors also note they chose Ford because of several rebates offered to repeat customers.

DISCUSSION

As the hearing was set on Local Rule 9014-1(f)(2) notice procedure, no written responses were required.

At the hearing, the trustee expressed his position on the reasonableness of the proposed lease agreement ~~xxxxxxxxxxxxxxxx~~

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

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

The Motion to Incur Debt filed by the debtors Robert Matthew King and Allison Rae King having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~xxxxxxxxxxxx~~

Final Ruling: No appearance at the April 20, 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 43 days' notice was provided. Dkt. 29.

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 Incur Debt is granted.

The debtor Atesh Dayal filed this Motion seeking authority to refinance her mortgage on her residence located at 9032 Testerman Way, Elk Grove, California.

The new loan is in the principal amount of \$470,085.00 paid at 3.750% interest over 30 years. The monthly payment is \$3,072.25.

The refinance will allow the debtor to pay off 100% of claims in this case.

The trustee filed a Response requesting that if the motion is granted certain language be added to the order. Dkt. 80. The debtor filed a Response consenting the that language being included in an order granting the motion.

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

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

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

The Motion to Incur Debt filed by the debtor Atesh Dayal 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.

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 39 days' notice was provided. Dkt. 57.

The Motion to Modify is XXXXXXX

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 53) filed on February 12, 2021.

The trustee filed an Opposition (Dkt. 58) on March 1, 2021, opposing confirmation on the following grounds:

1. The debtor is \$3,050.00 delinquent under the proposed plan.
2. The debtor's plan fails to provide for post-petition arrearages totaling \$7,873.84 to Class 1 Creditor M&T Bank. When accounting for those post-petition arrearages the plan payment must be \$3,087.00, which is higher than the proposed \$3,050.00 payment.
3. The debtor has not filed supplemental schedules.
4. The Confirmed Plan contained a provision requiring the debtor to turnover tax refunds greater than \$2,000, which provision is not in the modified plan.
5. Because the debtor's non-exempt assets total \$31,114.71, the debtor must pay 100% of unsecured claim totaling \$757.86, plus the 1.63% federal judgment rate of interest. The plan does not provide the required interest rate.

DISCUSSION

The parties reported during the prior hearing that the debtor provided copies of her taxes and pay advices, and that the remaining grounds for opposition could be addressed in an order confirming plan.

The hearing was continued to allow the trustee time to review the documents.

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 filed by the debtor, Brenda Ann Jacobson, 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**

20. [21-20094](#)-C-13 MARK PARDO AND KATHLEEN MOTION TO CONFIRM PLAN
[PLC](#)-5 RAPISURA-PARDO 3-8-21 [[37](#)]
Peter Cianchetta

Final Ruling: No appearance at the April 20, 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 43 days' notice was provided. Dkt. 41.

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 Second Amended Chapter 13 Plan (Dkt. 40) filed on March 8, 2021.

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, 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 granted, the debtor's Second Amended Chapter 13 Plan filed on March 8, 2021 (Dkt. 40) 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.