

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

May 25, 2021 at 1:30 p.m.

ALL APPEARANCES MUST BE TELEPHONIC

(Please see the court's website for instructions.)

1.	17-27307 -C-13	KIMBERLY WELCH	MOTION TO MODIFY PLAN
	RWH -5	Ronald Holland	4-13-21 [77]

Final Ruling: No appearance at the May 25, 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 42 days' notice was provided. Dkt. 81.

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

No opposition to the Motion has been filed.

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

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

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

The Motion to Modify filed by the debtor, Kimberly Michelle Welch, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and

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good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan filed on April 12, 2021 (Dkt. 76) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

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. 68.

The Motion to Approve Loan Modification is xxxxxx.

U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the WaMu Mortgage PassThrough Certificates, Series 2007-HY1 ("Movant"), filed this Motion seeking authority for the debtor to enter into a trial loan modification.

The trial modification plan provides that if the debtor makes three payments in the amount of \$2,101.90 on May 1, 2021, June 1, 2021, and July 1, 2021, then Movant will propose a permanent loan modification to debtor.

The trustee filed an Opposition on May 7, 2021, on the basis that the debtor has not joined the Motion, the debtor is delinquent in plan payments, the requested relief (whether approval of a loan modification or relief from stay) is not clear, and that the debtor has not filed amended Schedules to show an ability to make payments. Dkt. 69.

The debtor filed a Notice of Joinder on May 11, 2021, joining the Motion and representing that a modified plan will be filed to address the loan modification. Dkt. 71. A review of the docket shows the Modified Plan was filed May 21, 2021. Dkt. 78.

DISCUSSION

At the hearing, xxxxxxxxxxxxxx

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

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

The Motion to Approve Loan Modification filed by the debtor Stacie Renae Pradie 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 xxxxxxxxxxxxxx

Final Ruling: No appearance at the May 25, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 133.

**The hearing on the Motion to Reconsider is continued to
June 8, 2021 at 1:30 p.m.**

The debtor filed this Motion seeking reconsideration of this court's Order (Dkt. 134) denying the debtor's Motion For Contempt. The Motion purports to be made pursuant to FRBP "9024(b)(1)(2) and (6)," on the following grounds:

1. The court stated in denying the Motion For Contempt that the debtor did not object to the amount of Proof of Claim No. 6, but the debtor did object to the amount.
2. The court held that the amount of the claim presumptively controls the interest rate. But, the Supreme Court in *Till v. SCS Credit Corp* stands for the principle that the Plan controls the interest rate, without requiring a debtor to object to the contract interest stated in the claim. A review of the usage of the word "amount" both in the Plan and in the Claim shows that the "amount" does not presumptively include the interest, meaning the cram-down interest rate stated in the plan controlled.
3. A review of the accounting provided to the debtor on March 26, 2021, shows USDA did not correctly apply payments - only \$10,479.59 is due and not \$11,253.35.

USDA'S RESPONSE

The United States Department of Agriculture, Rural Housing Service ("USDA"), filed a Response on April 27, 2021, opposing the Motion. Dkt. 135. The debtor filed a Reply on May 4, 2021. Dkt. 137. The Response argues:

1. Where a party files a motion for reconsideration within 14 days following the date of entry of the judgment or order, the motion is treated as a motion to alter or amend the judgment under Civil Rule 59(e) made applicable in bankruptcy by Rule 9024.

2. The Objection To Claim did not modify USDA's lien rights.
3. USDA's POC, No. 6, identified its claim as fully secured by the Debtor's residence in the amount of \$55,541.36 bearing interest at 8.75%. Because the POC and supporting documents were already of record, there is no newly discovered evidence, any clear error, or intervening change in the controlling law to support reconsideration.
4. 11 U.S.C. § 1322 prohibits the "cramdown" of USDA's lien, meaning the contractual rate of interest controlled.
5. The debtor's plan expressly states that proof of claims control.
6. The debtor's calculation of interest fails to account for accruing principle over six years and the application of taxes and insurance.
7. No ground for reconsideration have been raised.

DEBTORS' S REPLY

1. 11 U.S.C. § 1322 does not prohibit the "cramdown" of USDA's lien where the debtor had a reasonable belief that the plan was binding and the creditor did not object to the plan treatment.
2. USDA had due process by receiving notice of the plan.

DISCUSSION

A review of the Federal Rules of Bankruptcy Procedure shows that rule "9024(b)(1)," "9024(b)(2)," and "9024(b)(6)" do not exist. Despite USDA raising this issue in its Response, the debtor did not address the matter in the debtor's Reply.

Presumably, the debtor means to cite Federal Rules of Civil Procedure 60(b)(1), (b)(2), and (b)(6), which are incorporated by Federal Rule of Bankruptcy Procedure 9024.

The ambiguity is compounded by the fact that the debtor does not state the legal standard the debtor is proceeding under other than providing the incorrect citation. Presumably, the grounds for the relief sought are (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); and (3) any other reason that justifies relief. FED. R. CIV P. 60(b)(1), (b)(2), & (b)(6). But, there is no argument explaining how any of those situations is applicable here.

The debtor's arguments are only that the court's holding was legal error, which is not grounds for relief under Federal Rules of Civil Procedure 60(b)(1), (b)(2), or (b)(6).

USDA also argues that a motion for reconsideration filed within 14 days of judgment must be construed as a, Federal Rules of Civil Procedure 59 motion to alter or amend. The Ninth Circuit has held "a motion for reconsideration is treated as a motion to alter or amend judgment under Federal Rule of Civil Procedure Rule 59(e) if it is filed within ten days of entry of judgment." Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp., 248 F.3d 892, 898-99 (9th Cir. 2001). But, that decision was rendered before the time period was enlarged from 10 days to 28 days in a 2009 amendment.

The debtor in the debtor's Reply did not address whether its Motion must be construed as a motion to alter or amend because it was filed within 28 days after the judgment was entered.

REQUEST FOR CONTINUANCE

After the prior hearing, USDA filed a request for a continuance to June 8, 2021, due to a scheduling conflict. Dkt. 139.

In light of the request the court shall continue 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 Reconsider filed by the debtor Marilyn Theresa Paventy having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Reconsider is continued to June 8, 2021 at 1:30 p.m.

Final Ruling: No appearance at the May 25, 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. 109.

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

The Motion for Allowance of Professional Fees is granted.
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Peter G. Macaluso, the Attorney ("Applicant") for Gregoire Tonoukouin, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period August 28, 2020, through February 4, 2021. Applicant requests fees in the amount of \$1,500.00 incurred while prosecuting a modified Chapter 13 plan.

FEES AND COSTS & EXPENSES ALLOWED

The unique facts surrounding the case, including prosecution of a modified plan, 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 \$1,500.00 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, Professional Employed by Gregoire Tonoukouin
("Debtor")

Fees in the amount of \$1,500.00, 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.

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. 42.

The Motion to Confirm is XXXXXXXXXX

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 41) filed on March 18, 2021.

The trustee filed an Opposition (Dkt. 45) on April 20, 2021, opposing confirmation because the debtor filed Amended Schedule I adding \$1,225.00 in rental/business/profession/farm income without explaining in the debtor's declaration the source of that income.

DISCUSSION

The trustee argues that because the source of the debtor's previously unreported \$1,225.00 in monthly rental/business/profession/farm income has not been disclosed, the plan is likely not feasible.

At the prior hearing the debtor reported that an Amended Schedule I was filed to include a statement of business income and expenses from MMIT, LLC. Dkt. 49.

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 Confirm filed by the debtor, Karen Elizabeth Deboda, 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

Final Ruling: No appearance at the May 25, 2021 hearing is required.

The Objection 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. 38.

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 defaults of the non-responding parties in interest are entered.

The hearing on the Objection to Confirmation of Plan is continued to June 8, 2021, at 1:30 p.m.

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

1. The plan proposed valuing the secured claim of Ford Motor Credit Company, but no motion valuing that claim has been granted to date.
2. Debtor's Amended Schedule D lists a secured claim for Theophilus Lgilige (1999 Ford 350), but the plan does not provide for this secured claim.
3. Debtor's Schedule E/F provides for the Internal Revenue Service with a priority amount of \$1.00. The Internal Revenue Service has filed a proof of claim, no. 4, with a priority portion of \$2,806.43, rendering the plan infeasible.

DISCUSSION

The debtor has filed a Motion To Value, set for hearing June 8, 2021. Dkt. 30. Because the outcome of this Objection relies on that Motion, the court shall continue this hearing to that date, also affording the debtor additional time to address the trustee's other feasibility concerns.

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 hearing on the Objection to Confirmation of Plan is continued to June 8, 2021, at 1:30 p.m.

Final Ruling: No appearance at the May 25, 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 36 days' notice was provided. Dkt. 101.

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 Third Amended Chapter 13 Plan (Dkt. 99) filed on April 19, 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, 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 granted, the debtors' Amended Chapter 13 Plan filed on April 19, 2021 (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.

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. 15.

The Motion to Extend the Automatic Stay is granted.

Tema K. Robinson ("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 March 17, 2021, after Debtor fell delinquent in plan payments. Order, Bankr. E.D. Cal. No. 20-21783, Dkt. 88. 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 that the previous case was dismissed because the debtor had to reduce work hours to deal with family issues. Dkt. 11. Since the prior case the issues are represented to be resolved, the debtor now receives SSI income, and the debtor obtained a real estate license which may allow increased income.

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 Tema Kay 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, 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.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(3) notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 13.

The Motion to Extend the Automatic Stay is ~~xxxxxx~~.

Thomas Miles Bradley ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year. Debtor's prior two bankruptcy cases were dismissed on October 9, 2020, and November 9, 2020, in both cases for failure to timely file all documents. Order, Bankr. E.D. Cal. No. 20-24429, Dkt. 11; Order, Bankr. E.D. Cal. No. 20-24880, Dkt. 18.

The debtor argues in the Motion that the prior cases failed due to the debtor's age and health issues, and that the debtor's health has since improved.

US BANK'S OPPOSITION

On May 6, 2021, U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2018-RPL1 ("US Bank") filed an Opposition. Dkt. 21.

US Bank argues that the case was filed in bad faith because (1) all of the debtor's cases were filed to prevent foreclosure sales; and (2) the debtor has not filed Schedules in or otherwise prosecuted any of the three cases. US Bank also notes that without having filed Schedules, it is unclear if the debtor has an ability to fund a Chapter 13 case.

MAY 18 HEARING

At the May 18, 2021 hearing, the debtor appeared telephonically, assisted by a representative of "Iwillsaveyourhome.com." The debtor reported being hospitalized, and requested a continuance to allow the filing of amended Schedules and a plan.

DISCUSSION

The debtor filed Schedules and a Chapter 13 Plan on May 21, 2021. Dkts. 32-36.

The plan is entirely funded by retirement income and social security, which is reported to be \$4,344.00. Dkt. 32. The debtor's disposable income is reported to be \$2,262.00, but the income is actually higher because the debtor is treating his mortgage as an expense where it needs to be provided for in the plan due to prepetition arrearages.

The plan proposes a monthly payment of \$2,889.88 for 36 months, all going to the Class 1 mortgage claim. Dkt. 36.

While the plan and Schedules only include the mortgage debt, it seems unlikely this is an accurate and complete representation of the debtor's finances. The debtor has attested to being in and out of the hospital, which suggests there are least some unscheduled debts.

At the hearing, **xxxxxxxxxxxxxx**

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

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

The Motion to Extend the Automatic Stay filed by Thomas Miles Bradley 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**

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. 30.

The Motion to Modify is denied.

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 28) filed on April 7, 2021.

The trustee filed an Opposition (Dkt. 31) on May 5, 2021, opposing confirmation on the following grounds:

1. The plan provides for the Class 2 claim of Freedom Mortgage, but no proof of claim has been filed by or for that creditor.
2. OneMain Financial Group LLC has filed a secured claim for in the amount of \$2,575.00. Debtor's plan does not provide for this secured claim.
3. Debtor's proposed plan payment is \$1,590.00 per month beginning May 2021. Debtor's supplemental Schedule I and J shows that the debtor has monthly net income of only \$388.41 per month .
4. The plan relies on a forbearance but as of May 3, 2021, a Notice of Forbearance for that time period has not been received.
5. Pursuant to the terms of Debtor's proposed plan, \$20,630.00 should be paid through April 2021. However, the trustee has received \$23,864.00.
6. Debtor's schedules list non-exempt assets totaling \$76,788.33. Debtor's plan must pay 100% of claims, plus the Federal Judgment Rate of 1.59%.

DISCUSSION

The majority of the trustee's grounds for opposition relate to plan feasibility. The trustee cannot pay the Class 2 claim of Freedom Mortgage without there being a proof of claim; OneMain Financial Group LLC has filed a secured claim in the amount of \$2,575.00 that is not accounted for; and the debtor's Supplemental Schedule I and J do not demonstrate an ability to make the plan payment.

The trustee also opposes confirmation because the plan does not meet the liquidation test without providing the Federal Judgment Rate of 1.59% to unsecured claims, and because the debtor has overpaid.

Each of the above is grounds to deny confirmation. 11 U.S.C. §§ 1325(a)(3), (a)(4), & (a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. 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, Naoupu Feleai Laloulu, 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.

11. [21-21468](#)-C-13 MARSHAUN TATE
[MRL](#)-1 Mikalah Liviakis

MOTION TO VALUE COLLATERAL OF
AMERICAN CREDIT ACCEPTANCE, LLC
4-26-21 [[11](#)]

Final Ruling: No appearance at the May 25, 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. 14.

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 American Credit Acceptance, LLC's ("Creditor") claim secured by the debtor's property commonly known as a 2014 Chrysler 300 SRT (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$20,000.00. Declaration, Dkt. 13.

DISCUSSION

The lien on the Property's title secures a purchase-money loan incurred on October 18, 2018, which is more than 910 days prior to filing of the petition. 11 U.S.C. § 1325(a)(9) (hanging paragraph).

Upon review of the record, the court finds the value of the Property is \$20,000.00. Therefore, Creditor's secured claim is determined to be \$20,000.00. 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 American Credit

Acceptance, LLC ("Creditor") secured by property commonly known as a 2014 Chrysler 300 SRT (the "Property") is determined to be a secured claim in the amount of \$20,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

12. [18-20571](#)-C-13 MARK ENOS
[20-2105](#) Peter Cianchetta
ENOS V. LAKEVIEW LOAN
SERVICING, LLC

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CIANCHETTA AND
ASSOCIATES FOR PETER L.
CIANCHETTA, PLAINTIFFS
ATTORNEY(S)
4-8-21 [[55](#)]

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 47 days' notice was provided. Dkt. 60.

The Motion for Compensation is ~~xxxxxx~~.

Peter Cianchetta, counsel for the plaintiff in this Adversary Proceeding, Mark Enos, filed this Motion seeking prevailing party fees of \$15,875.00 in fees and \$35.95 in costs pursuant to California Code of Civil Procedure § 1717.

The fees result from counsel spending 31.5 hours, billed at \$400.00 per hour, and counsel's paralegal Mary McCaman spending 13 hours, billed at \$175.00 per hour. The costs result from \$13.45 for service of the summons and complaint and \$22.50 for court call.

DEFENDANT'S RESPONSE

The Defendant Lakeview Loan Servicing, LLC ("Defendant"), filed a Response on May 11, 2021. Dkt. 62.

The Defendant only opposes fees and costs that are excessive, duplicative, redundant, administrative, vague, blocked or lumped, and irrelevant as to Lakeview and the above entitled adversary proceeding.

The Defendant's specific objections are to the following billing entries:

1. 02/04/2020 - 3.00 hour entry regarding mortgage analysis. This entry is excessive and vague.
2. 02/05/2020 - 2.00 hour entry regarding mortgage analysis. This entry is excessive and vague.
3. 5/7/2020 - 4.00 hour entry regarding continuation of mortgage analysis. This entry is excessive and vague.
4. 5/21/2020 - 2.30 hour entry regarding continued mortgage analysis. This entry is excessive and vague.
5. Lakeview specifically objects to the mortgage analysis hours on the basis that a combined total of 13.00 hours to conduct a mortgage analysis is excessive and the four

separate entries for this activity is redundant.

6. 05/22/2020 - 2.30 hour entry regarding begin drafting complaint and 4.90 hour entry to finish complaint and exhibits; combined hours total 7.2 hours. This entry is excessive.

7. 6/2/2020 - .5 hour entry to download complaint, lookup and verify service address. This entry pertains to an administrative task.

8. 3/3/2021 - 3.00 hour entry regarding review exhibits and ADT of Defendants. This entry is excessive. With the exception of two ledgers prepared by Lakeview that are no more than two pages, the exhibits contained in the alternate direct testimony of Lakeview included exhibits from Plaintiff's complaint and Lakeview's proof of claim filed in Plaintiff's bankruptcy case prior to this adversary proceeding.

MOVANT'S REPLY

The Movant filed a Reply on May 20, 2021, providing the following explanations for the above entries:

1. The time is actual time spent by Mary McCaman, paralegal, in gathering all of the documents in preparing a spreadsheet to do the analysis of Mr. Enos' mortgage. She did not complete the spreadsheet and analysis until the following day.
2. Same as above.
3. This is actual time spent by Mary McCaman, in updating the prior analysis using new data and tracking the payments and their disbursements by Lakeview Loan Servicing LLC.
4. This also is actual time spent by Mary McCaman, in updating prior analysis. This and the previous entries include time spent discussing the mortgage issue with Mr. Enos.
5. As stated above, this 13 hours is actual time spent performing the mortgage analysis. I ask counsel for Lakeview what she believed reasonable amount of time was to perform the mortgage analysis. I received no response. This actual time was spent and captured with our case management system which includes a billing feature where time is entered contemporaneous with the work.
6. In drafting a complaint for an adversary proceeding involves more than just typing up a few pages of a legal document. It involves taking the time to accurately state what the issue is. This involves reviewing not only the prior analysis done in my

office but also reviewing the proof of claim the notice of mortgage payment changes and the trustees payments made to Lakeview.

7. Downloading the complaint took about 10 minutes. Looking up and verifying the service address of Lakeview loan servicing is not a simple as it seems, and is not an administrative task. As an experienced litigator I know well that we cannot rely on the address listed in the proof of claim as that may not be the proper address to serve an adversary proceeding on. I had to look up Lakeview loan servicing's proper service for address on the California Secretary of State's website. This consumed the other 20 minutes of the half-hour bill.
8. The 3 hour entry is actual time spent reviewing the alternate direct testimony, and the exhibits, comparing them to our accounting, and doing analysis to determine who is correct. The review of the alternate direct testimony and exhibits also included comparing them to the prior accountings loan payment ledger and account history provided by Lakeview.

Plaintiff's counsel also represents that billing entries were made contemporaneously through the "MyCase" program; that many meetings, calls, and emails in this case were not charged; and the more fees and charges have been incurred prosecuting this Motion.

APPLICABLE LAW

Unless authorized by statute or provided by contract, attorney's fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorney's fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), amended, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). An attorney's fee award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). Having this discretion is appropriate "in view of the [court's] superior understanding of the litigation and the desirability of avoiding

frequent appellate review of what essentially are factual matters.”
Hensley, 461 U.S. at 437.

DISCUSSION

The parties do not dispute that there is a basis in contract allowing prevailing party fees, and that the Plaintiff was the prevailing party in this Adversary Proceeding.

The point of contention is are billing entries the Defendant argues are either excessive or vague, or both.

5 out of 8 of the disputed entries are for “mortgage analysis” performed by Movant’s paralegal, which the Defendant concludes was all excessive and vague.

This Adversary Proceeding centered around an improper accounting. It is not vague that an investigation of what was owing had to be performed to determine whether there was a cause of action. And, there is no explanation why this work is excessive when it was central to the cause of action.

The other entries opposed are for (1) drafting of the complaint and exhibits (7.2 hours); (2) download of the complaint and review of Defendant’s address for service (.5 hours); and (3) for review of Defendant’s Alternate Direct Testimony and trial Exhibits (3 hours).

While these entries have been represented to be excessive, and the Defendant requests they be prorated, the Defendant has not made a contention of what a reasonable billing time for these services would be.

At the hearing, **xxxxxxxxxxxxxxxx**

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 Compensation filed by Peter Cianchetta, counsel for the Plaintiff (“Movant”) in this Adversary Proceeding on appeal 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**

Final Ruling: No appearance at the May 25, 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. 66.

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 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 filed by the debtors, James Ray Domsic and Amanda L Domsic, 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 debtors' Modified Chapter 13 Plan filed on April 20, 2021 (Dkt. 65) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.