

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

June 8, 2021 at 1:30 p.m.

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

1.	20-23000 -C-13	RITA FLORES	MOTION TO WAIVE SECTION 1328
	MRL -1	Mikalah Liviakis	CERTIFICATE REQUIREMENT,
			SUBSTITUTE PARTY, AS TO DEBTOR
			5-1-21 [28]

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. 32.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest.

<p>The Motion to Substitute is granted.</p>
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Carrie Horton, the debtor's daughter-in-law, filed this Motion (1) offering a suggestion of death of the debtor, Rita Dolores Flores; (2) seeking authority to substitute as a representative; and (3) seeking waiver of the 11 U.S.C. § 1328 certification requirement.

The movant argues the Motion should be granted because (1) the movant is knowledgeable of the debtor's financial affairs, and (2) the movant is capable of making the plan payments.

The movant filed as Exhibit A, a copy of a Certificate of Death showing the debtor passed away on February 23, 2021. Dkt. 31.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that a Chapter 13 case where the debtor dies or becomes incompetent may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred, if further administration is possible and in the best interest of the parties.

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Based on the evidence provided, and no party in interest having proffered opposition, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that the movant may continue to administer the case on behalf of the deceased debtor. Additionally, the court finds good cause to waive the 11 U.S.C. § 1328 certification requirement.

Therefore, 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 for Substitute After Death filed by 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 is granted, and Carrie Horton is substituted as the successor-in-interest to the debtor Rita Dolores Flores and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the 11 U.S.C. § 1328 certification requirement is waived.

Final Ruling: No appearance at the June 8, 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 61 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).

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 Confirm filed by the debtor, Devisteen Conley, 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 Modified Chapter 13 Plan filed on April 8, 2021 (Dkt. 78) 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.

3. [21-21004](#)-C-13 TRAVIS GROSJEAN
[KMM](#)-1 Peter Nisson

OBJECTION TO CONFIRMATION OF
PLAN BY CREDIT SUISSE FIRST
BOSTON MORTGAGE SECURITIES CORP
4-30-21 [[16](#)]

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 39 days' notice was provided. Dkt. 19.

The Objection to Confirmation of Plan is sustained.

Creditor Suisse First Boston Mortgage Securities Corp., CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-1, U.S. Bank National Association, as Trustee ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan understates the arrears to be \$65,000.00 where the Proof of Claim shows the arrears total \$69,453.19.
2. The debtor will not be able to make the increased plan payment necessary to provide for the higher-than-anticipated arrears.

DISCUSSION

The plan provides for monthly payments of \$1,203.71, which constitutes nearly all of the debtor's \$1,205.00 monthly disposable income. Therefore, it does not appear the debtor has the ability to make the increased plan payment necessary to provide for the higher-than-anticipated arrears. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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 Suisse First Boston Mortgage Securities Corp., CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-1, U.S. Bank National Association, as 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 Objection is sustained.

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 21 days' notice was provided. Dkt. 19.

The Objection to Confirmation of Plan is XXXXXXX

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

1. The debtor has a 2019 Ford Fusion vehicle, which vehicle secures a \$21,000 claim. That claim is not provided for through the plan or as an expense.
2. The debtor testified at the 341 Meeting that he receives \$1,500 in monthly rental income, which is less than the \$1,900 stated on Schedule I. The debtor also testified at the 341 Meeting he is recently employed at Bonney Plumbing, which is not reflected on Schedule I.
3. The plan terms provide for payments to Select Portfolio Servicing as a Class 1 to commence in month 6 of the plan. But, the terms require 60 months to pay that claim.

DISCUSSION

On May 20, 2021, the debtor filed Amended Schedules. Dkt. 21. The amended filing shows wage income from Boney Plumbing, and reports \$1,500 in monthly rental income, resulting in monthly income of \$4,152 (an increase of \$812.00 in monthly income over the original Schedule I).

Only the first page of Amended Schedule J was filed. While Amended Schedule D indicates the claim of Westlake Financial Services (secured by the 2019 Ford Fusion) will be paid as a Class 4, it is not clear what the monthly expense for that claim is. Nor is it clear what the debtor's disposable income is.

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**

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. 133.

The Motion to Reconsider is denied without prejudice.

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 grounds 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).

Because the Motion fails to articulate grounds for relief, the Motion shall be denied without prejudice to the debtor filing a new Motion

which does state grounds.

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. But, the Motion does not state any grounds for relief under either Federal Rules of Civil Procedure 59 or 60 in any 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 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 Motion to Reconsider is denied without prejudice.

Final Ruling: No appearance at the June 8, 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. 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. 52) filed on May 4, 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, Sidney Bernard Moore and Angela Ingrid Moore, 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 May 4, 2021 (Dkt. 52) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtors' 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.

7. [21-20838](#)-C-13 RON COLLA
[PGM](#)-2 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
FORD MOTOR CREDIT COMPANY
5-4-21 [[30](#)]

Final Ruling: No appearance at the June 8, 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. 34.

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 Ford Motor Credit Company's ("Creditor") claim secured by the debtor's property commonly known as a 2014 Ford F150 (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$7,900.00. Declaration, Dkt. 32.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in May 2014, 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 \$7,900.00. Therefore, Creditor's secured claim is determined to be \$7,900.00. 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 Ford Motor Credit

Company secured by property commonly known as a 2014 Ford F150 is determined to be a secured claim in the amount of \$7,900.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

8. [21-20838](#)-C-13 RON COLLA
[RDG](#)-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-5-21 [[35](#)]

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 20 days' notice was provided. Dkt. 38.

The Objection to Confirmation of Plan is XXXXXXX

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.

CONTINUANCE OF HEARING

At the May 25, 2021, hearing, the court granted a continuance to allow the debtor's Motion To Value (Dkt. 30) to be heard.

DISCUSSION

A review of the docket shows the Motion To Value has been granted. The issue remaining is whether the plan is feasible given the higher-than-anticipated tax claims, and the failure to provide for the secured claim of Theophilus Lgilige.

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 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 to Confirmation of
Plan is ~~xxxxxxxxxxxx~~

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice. The Proof of Service shows that 25 days' notice was provided. Dkt. 45.

The Motion to Sell is granted.

The debtor Honey Orwinabeth Spanjian filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 8901 Barrhill Way, Fair Oaks, California ("Property").

The proposed purchasers of the Property are Stuart and Ann Haven, and the proposed purchase price is \$579,000.00.

The sale of the property will result in proceeds sufficient to pay all claims in this case.

CHAPTER 13 TRUSTEE'S RESPONSE

The trustee filed a Response indicating non-opposition, but requesting certain language be included in the order granting the Motion. Dkt. 47.

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.

Broker's Commission

Movant further seeks approval of a \$32,000.00 commission for the real estate brokers. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a \$32,000.00 commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Movant also requests waiver of the Federal Rule of Bankruptcy Procedure 6004(h) 14-day stay. The court finds good cause to waive the Federal Rule of Bankruptcy Procedure 6004(h) 14-day stay here.

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 the debtor Honey Orwinabeth Spanjian ("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 Motion is granted. Movant'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.

Final Ruling: No appearance at the June 8, 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. 28.

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

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 26) filed on April 27, 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 debtor, Judy Chi Huyen Ho, 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 filed on April 27, 2021 (Dkt. 26) 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 Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 214.

The Objection to Confirmation of Plan is sustained.

Creditor U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor's Schedules do not report any deductions for income and self-employment taxes, meaning the debtor's disposable income is less than reported.
2. The debtor has not provided any evidence that he receives \$650 per month in "rental income."
3. The debtor is currently delinquent for the February through May 2021 post-petition payments.
4. The plan provides for payments to Creditor which are not equal over the Plan term.
5. The plan and case were not filed in good faith, evinced by the fact that there is not sufficient income to fund a plan, there is only one creditor, the debtor is not taking deductions for taxes, and the debtor has presented no evidence of the status of the Social Security settlement he proposes relying on.
6. The debtor's plan payments are not sufficient to pay the required monthly mortgage payments, which is an impermissible modification of Creditor's claim, and a violation of 11 U.S.C. § 1322(b)(2).

DISCUSSION

The Creditor's grounds for objection are well-taken. The debtor is delinquent in plan payments, and has not Scheduled deductions for self-employment taxes, which means the debtor has not met his burden of showing the plan is feasible.

The plan also proposes stepped payments towards Creditor's claim, rather than equal monthly payments.

The above grounds are reason to deny confirmation. 11 U.S.C. §§ 1322(b)(2), 1325(a)(5) & (a)(6). 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 U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST, 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.

Final Ruling: No appearance at the June 8, 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 48 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 Confirm filed by the debtor, Lajuan Antoinette Andrews, 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 Modified Chapter 13 Plan filed on April 20, 2021 (Dkt. 64) 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.

13. [21-21674](#)-C-13 VINESH/SNITA SAMI
[PPR](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY SIERRA PACIFIC MORTGAGE
COMPANY, INC.
5-17-21 [[12](#)]

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 22 days' notice was provided. Dkt. 14.

The Objection to Confirmation of Plan is sustained.

Creditor Sierra Pacific Mortgage Company, Inc. ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan provides for Creditor's claim as a Class 4 where there are \$4,071.77 in arrears to be paid.
2. The plan misstates the postpetition payment to be \$1,918.00, but the actual postpetition payment is \$1,978.62.

DISCUSSION

While no Proof of Claim has been filed to date, Creditor has filed a Declaration providing testimony as to what the prepetition arrearage and postpetition arrearage amounts are. Dkt. 18.

A review of the debtor's Schedules show an inability to make the increased payments to account for the higher-than-anticipated arrears and postpetition payments.

That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6). 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 Sierra Pacific Mortgage Company, Inc., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

14. [21-21083](#)-C-13 BIREN/KAMLESH PRASAD
[RDG](#)-1 Gabriel Liberman

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-17-21 [[16](#)]

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 22 days' notice was provided. Dkt. 19.

The Objection to Confirmation of Plan is XXXXXXXXXX

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

1. The debtors' schedules a \$2,900 2020 tax refund, but no returns have been filed for that year, meaning the refund amount is speculative. If the refund is higher, the plan may not meet the liquidation test.
2. The debtor's pay advices show average monthly income of \$5,433.33, which is higher than the \$4,750.01 reported on Schedule I. Additionally, the debtor receives \$600 in monthly mileage reimbursement.
3. The joint-debtor's pay advices show average monthly income of \$1,598.00, which is higher than the \$710.00 reported on Schedule I.

DISCUSSION

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 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 June 8, 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 28 days' notice was provided. Dkt. 47.

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.

The debtor James Edwards filed this Motion seeking to employ Weitz & Luxenburg, P.C. as special counsel pursuant to 11 U.S.C. §§ 328(a) & 330, effective April 21, 2017.

The debtor seeks to employ special counsel to pursue personal injury claims.

The debtor filed the Declaration of William Walsh in support of the Motion, which provides testimony as to special counsel's experience, and testimony that special counsel does not hold any adverse interests. Dkt. 45.

DISCUSSION

Taking into account all of the relevant factors in connection with the employment and compensation of special counsel, considering the declaration demonstrating that special counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Weitz & Luxenburg, P.C. as special counsel on the terms and conditions set forth in the Retainer Agreement filed as Exhibit A, Dkt. 46. Approval of the contingency fee 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 the debtor James Edwards 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 the debtor James Edwards is authorized to employ Weitz & Luxenburg, P.C. as special counsel, effective April 21, 2017, on the terms and conditions set forth in the Retainer Agreement filed as Exhibit A, Dkt. 46.

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.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

16. [21-21692](#)-C-13 FLORENTINE ABBOTT
[ETW](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-12-21 [[10](#)]

STEVEN A. NERAD, TRUSTEE OF
THE STEVEN A. NERAD FAMILY
TRUST VS. ABBOTT

Final Ruling: No appearance at the June 8, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(2) procedure which requires 14 days' notice. The Proof of Service shows that 27 days' notice was provided. Dkt. 15.

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 Motion for Relief from the Automatic Stay is denied
without prejudice as moot.**

The instant case was dismissed on May 18, 2021, for failure to timely file documents. Dkt. 21.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) **the time the case is dismissed;** or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of

dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) ***revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.***

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of May 18, 2021, the automatic stay as it applies to the subject property, and as it applies to the debtor, was terminated by operation of law. At that time, the subject property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to the debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the debtor and the subject property on May 18, 2021.

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 Steven A. Nerad, as trustee of the Steven A. Nerad family trustee dated September 12, 2018 ("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 denied without prejudice as moot, this bankruptcy case having been dismissed on May 18, 2021 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to the debtor pursuant to 11 U.S.C.

§ 362(c)(2)(B) and the real property commonly known as 3341 Corvina Drive, Rancho Cordova, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the May 18, 2021, dismissal of this bankruptcy case.