

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

**June 13, 2022 at 1:30 p.m.**

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1.	<a href="#">22-20801</a> -C-13	WILLIE BAILEY	OBJECTION TO CONFIRMATION OF
	<a href="#">APN-1</a>	Pauldeep Bains	PLAN BY FIRST FRANKLIN MORTGAGE
			LOAN TRUST
			5-18-22 [ <a href="#">18</a> ]

**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. 21.

**The Objection to Confirmation of Plan is overruled.**

Creditor, First Franklin Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FFC, U.S. Bank National Association, ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan does not provide for the full amount of Creditor's secured claim as filed in its proof of claim in the amount of \$135,054.31.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on June 1, 2022. Dkt. 25. Debtor states that he agrees to increasing the plan payments to provide for the full amount of Creditor's claim in the amount of \$135,054.31. Debtor represents the plan payment will be \$3,242.00 for months 1-60 and that the additional income will come from the debtor's non-filing spouse's IHSS income that is received for the care of her sister.

**DISCUSSION**

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim. The debtor has acknowledged the deficiency in the plan of the Creditor's claim and has adjusted the plan's payments to provide for the claim in full.

No other grounds for objection remaining, it appears the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the plan is confirmed.

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

**June 13, 2022 at 1:30 p.m.**  
**Page 1 of 22**

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 First Franklin Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FFC, U.S. Bank National Association, 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 overruled, and the debtor's April 1, 2022 Chapter 13 Plan (Dkt. 3), is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. [19-27903](#)-C-13 TOUSSAINT/FELECIA  
[TLA](#)-2 WILLIAMS  
Thomas Amberg

MOTION TO MODIFY PLAN  
4-30-22 [[45](#)]

**Final Ruling:** No appearance at the June 13, 2022 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 38 days' notice was provided. Dkt. 51.

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 Plan is granted.**

The debtors 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 debtors, Toussaint and Felecia Williams, 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 Modified Chapter 13 Plan (Dkt. 49) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

3. [21-20009](#)-C-13 CYNTHIA ARIETA  
[PGM](#)-2 Peter Macaluso

MOTION TO WAIVE SECTION 1328  
CERTIFICATE REQUIREMENT, SUBSTITUTE  
PARTY, AS TO DEBTOR  
5-9-22 [[68](#)]

**Final Ruling:** No appearance at the June 13, 2022 hearing is required.  
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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. 72.

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 Substitute is granted.**

Successor-In-Interest, Salena Arieta, filed this Motion (1) offering a suggestion of death of the debtor, Cynthia Arieta; (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, (2) the movant is capable of making the plan payments, and (3) the movant intends to sell the debtor's real property and pay all creditors in full.

The movant filed as Exhibit B, a copy of a Certificate of Death showing the debtor passed away on September 17, 2021. Dkt. 70.

#### **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.

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 Salena Arieta is substituted as the successor-in-interest to Cynthia Arieta 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.

4. [16-26714](#)-C-13 PAULA HUTCHINSON  
[PGM](#)-7 Peter Macaluso

MOTION TO APPROVE LOAN  
MODIFICATION  
4-27-22 [[151](#)]

**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. 155.

**The Motion to Approve Loan Modification is granted.**

Debtor, Paula M. Hutchison, filed this Motion seeking authority to enter into a loan modification agreement with Freedom Mortgage Corporation.

The proposed financing is in the principal amount of \$202,652.13, paid at 2.75% interest over a 30 year term. Monthly payments are proposed to be \$827.31 for principal and interest, plus \$492.06 for escrow for a total payment of \$1,319.37.

The Chapter 13 Trustee filed a response on May 17, 2022 (dkt. 156), stating he had no objection to the loan modification, however; he also noted that the debtor was on Month 60 of the plan term and needed to pay \$508.00 in order to not be delinquent and complete the plan.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. The terms being reasonable and there being no opposition to the loan modification, 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 Approve Loan Modification filed by Debtor, Paula M. Hutchison, 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.

5. [18-23520](#)-C-13 GEORGE SALINAS AND SUSAN MOTION TO RETAIN AND DISBURSE  
[FF-4](#) MCCLURE SETTLEMENT FUNDS  
Gary Fraley 5-24-22 [[63](#)]

**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. 67.

**The Motion to Retain, and Receive, funds is granted.**

George Salinas and Susan Lynn McClure ("Debtors") moves for an order to permit debtors to retain, and receive, settlement funds from their auto insurance carrier in connection with an accident that resulted in the total loss of their vehicle.

**DISCUSSION**

11 U.S.C. § 1327 binds the debtor and creditors to the provisions in the plan. The confirmation of the plan vests all property of the estate in the debtor, unless otherwise provided for in the plan. 11 U.S.C. § 1327(b). A secured creditor is limited to the amount of the secured claim as allowed for in the confirmed plan. See In re Holtslander, 507 B.R. 779, 786 (Bankr.N.D.N.Y. 2014). The property vested in the debtor is free and clear of any claim or interest of any creditor provided for by the plan, unless otherwise provided for in the plan. 11 U.S.C. § 1327(c).

Here, section 6.01 of the debtors' confirmed plan provided for the property to vest with the debtor. (Dkt. 5, p. 6). The secured creditor, Travis Credit Union, retained its lien up to the secured amount allowed for in the plan in the amount of \$17,425.49. The Chapter 13 Trustee has fully paid the secured claim. (Dkt. 66, exhibit D). Therefore the proceeds from the casualty insurance policy is property of the estate that is fully vested in the debtors, free and clear of any claim or interest of any creditor. Further, the debtors have amended their Schedule C to exempt the vehicle under Cal. C. Civ. P. § 704.

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 Retain, and Receive, Funds filed by Debtors, George Salinas and Susan Lynn McClure, 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.

6. [22-20738](#)-C-13 STEVEN TRAN  
[RDG-1](#) Mikalah Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
5-17-22 [[16](#)]

**Final Ruling:** No appearance at the June 13, 2022 hearing is required.  
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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 overruled.**

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

1. The 341 Meeting of Creditors has not been held.

#### **DISCUSSION**

A review of the docket shows that the debtor did appear at the continued 341 meeting of creditors on June 9, 2022 and the meeting has been concluded to the debtor.

No other grounds for objection remaining, it appears the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, 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 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 overruled, and the debtor's March 29, 2022 Chapter 13 Plan (Dkt. 3), is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 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 20 days' notice was provided. Dkt. 11.

**The Motion to Extend the Automatic Stay is granted.**

Bonita Thomas Melendez ("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, 2022, after Debtor failed to make plan payments. Order, Bankr. E.D. Cal. No. 19-27056, Dkt. 81. 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 fell into depression and couldn't make plan payments. Debtor declares that she has sought counseling and is now on medication that allows her to function and meet her day-to-day requirements.

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 Bonita Thomas Melendez 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.

8. [22-20364](#)-C-13 SALLY ALLEN  
[DVW-1](#) Richard Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK, N.A.  
4-6-22 [[35](#)]

Thru #11

**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. 37.

**The Objection to Confirmation of Plan is xxxxxxx**

Creditor, U.S. Bank N.A. ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan is infeasible because debtor's current income is insufficient to make plan payments and the plan contemplates speculative future income as current income.
2. Debtor has filed prior cases and has not been able to cure her mortgage arrears on the creditor's claim.

**RESPONSE**

At the prior hearing on April 26, 2022, the Court allowed additional time for the debtor to brief the issue and provided competent evidence as to the debtor's income, including whether the debtor has found a roommate that is paying debtor rent.

The debtor filed a response May 25, 2022 representing that the plan is feasible on its face. She states that her gross income on a monthly basis is \$5,631, and that she anticipates a promotion. She further represents that a renter has moved in with her and is paying \$500 a month in rent beginning on June 1, 2022.

On May 24, 2022, debtor filed a declaration (dkt. 61) and exhibits (dkt. 62) supporting her contention that she has found a roommate - who is paying \$500 a month in rent. She provided two recent pay stubs - representing 4 weeks of income - from her employer, SMUD. Debtor further represents that a promotion is probable in the coming months, and/or that she can get a second job as soon as she can free herself from the stress of this controversy to make up the final \$700 per month needed to make the higher plan payments beginning in October.

**DISCUSSION**

At the hearing xxxxxx

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

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

The Objection to the Chapter 13 Plan filed by Sally Janine Allen, 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 **xxxxxx**

9. [22-20364](#)-C-13 SALLY ALLEN  
[RDG-1](#) Richard Jare

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
4-5-22 [[31](#)]

**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. 34.

**The Objection to Confirmation of Plan is ~~xxxxxx~~**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that the plan proposes paying the value of the collateral securing a Class 2 claim without the court entering an order on the motion to value.

**DISCUSSION**

At the prior hearing on April 26, 2022, the court granted the debtors motion valuing the secured claim of Ovation Sales Finance Trust as a Class 2 claim. This resolved the Trustee's objection, however, the Trustee and Court agreed to continue the objection to allow the Trustee to review additional information to be provided by the debtor in regards to the debtors income.

At the hearing ~~xxxxxx~~

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

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

The Objection to the Chapter 13 Plan filed by Sally Janine Allen, 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 ~~xxxxxx~~

10. [22-20364](#)-C-13 SALLY ALLEN  
[SMR-1](#) Richard Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY VILLA DEL SOL  
HOMEOWNERS ASSOCIATION OF  
SACRAMENTO  
4-19-22 [[38](#)]

**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 36 days' notice was provided. Dkt. 47.

**The Objection to Confirmation of Plan is ~~XXXXXXXX~~**

Creditor, Villa Del Sol Homeowners Association of Sacramento ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan is infeasible because debtor's current income is insufficient to make plan payments and the plan contemplates speculative future income as current income.
2. Debtor has filed three prior cases in the last 5 years and has not been able to cure her arrears on the creditor's claim.

**RESPONSE**

The debtor filed a response May 25, 2022 representing that the plan is feasible on its face. She states that her gross income on a monthly basis is \$5,631, and that she anticipates a promotion. She further represents that a renter has moved in with her and is paying \$500 a month in rent beginning on June 1, 2022.

On May 24, 2022, debtor filed a declaration (dkt. 61) and exhibits (dkt. 62) supporting her contention that she has found a roommate - who is paying \$500 a month in rent - with a bank deposit slip and a residential lease agreement. She also provided two recent pay stubs - representing 4 weeks of income - from her employer, SMUD. Debtor further represents that a promotion is probable in the coming months, and/or that she can get a second job as soon as she can free herself from the stress of this controversy to make up the final \$700 per month needed to make the higher plan payments beginning in October.

**DISCUSSION**

At the hearing ~~XXXXXX~~

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Sally Janine Allen, 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 **xxxxxx**

11. [22-20364](#)-C-13 SALLY ALLEN  
[SMR-2](#) Richard Jare

MOTION FOR ANNULMENT OF  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM AUTOMATIC STAY  
5-10-22 [[49](#)]

VILLA DEL SOL HOMEOWNERS  
ASSOCIATION OF SACRAMENTO  
VS.

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 56.

**The Motion for Relief from the Automatic Stay is ~~xxxxxx~~.**

Villa Del Sol Homeowners Association of Sacramento ("Movant") filed this Motion seeking annulment of the automatic stay, or in the alternative relief from the automatic stay as to the debtor's residential property located at 7308 Villa Del Sol Lane, Citrus Heights, CA (the "Property").

Movant represents that a non-judicial foreclosure sale of the subject property occurred on January 22, 2021, and the debtor filed a previous Chapter 13 case on April 23, 2021, three days before the Deed of Sale was recorded on April 26, 2021. The debtor's prior Chapter 13 case was dismissed on February 18, 2022 and the debtor then filed this Chapter 13 case on the same day.

Movant argues that it lacks adequate protection of its ownership interest in the Property, the debtor has no equity in the Property, and the Property is not necessary to an effective reorganization of the debtor's estate. The movant contends that the debtor lacks equity because the debtor did not redeem the Property within 90 days following the foreclosure sale, and only the ministerial act of recording the deed remained at the time of the previous filing.

Movant further argues that annulment should be granted under a balancing of the equities test. The movant contends that the factors under In re Fjelsted, 293 B.R. 12 (9th Cir. BAP 2003), support annulment of the automatic stay.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 25, 2022. Dkt. 63. The debtor represents that the Court in the debtor's prior case denied this same motion and issue preclusion applies here. Debtor asserts that debtor still owns the Property because the Trustee's Deed Upon Sale was not recorded before the petition in the prior case was filed. The debtor further represents that the movant was informed of the prior case filing before the deed was

recorded on April 26<sup>th</sup>, 2021. The debtor further argues that there is not any good evidence as to whether a non-judicial foreclosure did in fact occur on January 22, 2021.

The debtor contends that because there was no 3<sup>rd</sup> party buyer, it in essence reverted back to the beneficiary if the sale is to be consumated, and there is no harm to any bonafide purchaser. The debtor states that the movant does not make a strong case as to any of the 12 Fjelsted factors.

Debtor represents that the Property is her personal residence and is essential for her rehabilitation. Debtor contends that there is an equity cushion to provide adequate protection to the movant and the movant has the burden to establish the amount of equity and has waited a long time before filing the motion for relief.

The debtor argues that because this is the same motion that was denied in the previous case the movant should be sanctioned for not recording a recession of the prior recorded deed.

## **DISCUSSION**

At the hearing **xxxxxx**

Based on the foregoing, the Motion is **xxxxxx**

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

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

The Motion for Relief from the Automatic Stay filed by Villa Del Sol Homeowners Association of Sacramento ("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 automatic stay provisions of 11 U.S.C. § 362(a) are **xxxxxx**

12. [22-20492](#)-C-13 GENEROSA DIZON  
[LP-3](#) Lewis Phon

MOTION TO VALUE COLLATERAL OF  
JENNINE BANAYAT  
5-16-22 [[55](#)]

**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 22 days' notice was provided. Dkt. 60.

**The Motion to Value is xxxxxx.**

The debtor filed this Motion seeking to value the portion of Jennine Banayat's ("Creditor") claim secured by the debtor's property located at 8609 Banff Vista Dr., Elk Grove, CA (the "Property").

The debtor declares that the replacement value of the Property at the time of filing was \$400,000. Declaration, Dkt. 57. The debtor's opinion of value is based upon the representation of the debtor as a real estate agent that is familiar with the neighborhood and she has investigated comparable properties listed for sale. She further represents that the property had previously been listed and received no offers, and that the property would need a substantial sum of money to convert the property from a senior care facility to residential use.

**DISCUSSION**

Upon review of the record, the court finds the value of the Property is xxx. There are \$355,652.25 of senior liens encumbering the Property. Therefore, Creditor's secured claim is determined to be \$xxx. 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 xxxxxxx

13. [22-20492](#)-C-13 GENEROSA DIZON OBJECTION TO DEBTOR'S CLAIM OF  
[RDG-1](#) Lewis Phon EXEMPTIONS  
4-20-22 [[43](#)]

**Final Ruling:** No appearance at the June 13, 2022 hearing is required.  
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The Objection has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 46.

**The Objection to Claimed Exemptions is overruled as moot.**

A review of the docket shows that the debtor has amended the Schedule C since the time the objection was made. (Dkt. 49) Therefore, the objection is moot.

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 overruled as moot.

14. [21-20094](#)-C-13 MARK PARDO AND KATHLEEN MOTION TO MODIFY PLAN  
[PLC-8](#) RAPISURA-PARDO 4-21-22 [[79](#)]  
Peter Cianchetta

**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. 83.

**The Motion to Modify Plan is denied.**

The debtors filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 80) filed on April 21, 2022.

The Chapter 13 Trustee filed an Opposition (Dkt. 84) on May 12, 2022, opposing confirmation on the following grounds:

1. The plan is not feasible because the plan provides for a creditor with a secured claim that had not filed a claim, and the debtors failed to file a claim on behalf of the creditor in time; and,
2. The plan is not proposed in good faith because the order confirming the prior plan stated that confirmation was contingent upon the debtors providing copies of their annual Profit and Loss Statements, and their Federal and State income tax returns, from their business on or before April 30 of each year and the debtors have not provided the documents for this year.

**DISCUSSION**

The deadline for filing proofs of claim in this case by a creditor was March 24, 2021. Notice of Bankruptcy Filing and Deadlines, Dkt. 16. The deadline for debtors to file a claim was October 19, 2021. Further, the debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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 Modify Plan 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 denied, and the plan  
is not confirmed.