

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

June 22, 2021 at 1:30 p.m.

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

1.	20-24912 -C-13	JAVIER CASTELLANOS AND	MOTION FOR AN ORDER APPROVING
	JFL -1	ALEJANDRA ALCANTAR	PARTIES TO ENTER INTO
		Richard Jare	SUBORDINATE NOTE AND PARTIAL
			CLAIM DEED OF TRUST
			5-18-21 [81]

Final Ruling: No appearance at the June 22, 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. 85.

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

The Motion to Incur Debt is granted.

U.S. Bank National Association filed this Motion seeking authority for the debtors to enter into a Subordinate Note and Partial Claim Deed of Trust secured by their residential real property located at 614 Alice Rae Circle, Galt, California.

The lender for the Subordinate Note is the Secretary of Housing and Urban Development. The principal amount is \$13,770.09, with an October 1, 2047, maturity date.

The movant represents that the Subordinate Note will help the debtors cure arrearages and make payments under their first Deed of Trust.

The debtors filed a Joinder of the Motion on May 29, 2021. Dkt. 95.

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DISCUSSION

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

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

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

The Motion to Incur Debt filed by 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 Motion is granted. U.S. Bank National Association'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.

2. [18-27116](#)-C-13 RICHARD GRIMES
[PGM](#)-5 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
5-18-21 [[96](#)]

Final Ruling: No appearance at the June 22, 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. 100.

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.

Peter G. Macaluso, the Attorney ("Applicant") for the debtor Richard Laron Grimes makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period November 12, 2020, through February 4, 2021. Applicant requests fees in the amount of \$1,200.00, which fees were incurred by counsel prosecuting a modified plan.

FEES ALLOWED

The unique facts surrounding the case, including prosecuting 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 \$1,200.00 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, counsel for 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 Peter G. Macaluso is allowed the

following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by the debtor
Richard Laron Grimes

Fees in the amount of \$1,200.00,

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.

3. [17-26233](#)-C-13 JEFFREY/CHRISTINA COOK MOTION FOR COMPENSATION BY THE
[MJD](#)-5 Matthew DeCaminada LAW OFFICE OF STUTZ LAW OFFICE,
P.C. FOR MATTHEW J. DECAMINADA,
DEBTORS ATTORNEY(S)
5-17-21 [[67](#)]

Final Ruling: No appearance at the June 22, 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 36 days' notice was provided. Dkt. 73.

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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Stutz Law Office, P.C., the Attorney ("Applicant") for the debtors Jeffrey William Cook and Christina Lee Cook ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period September 2, 2020, through May 17, 2021.

Applicant requests fees in the amount of \$2,000.00, which is a reduced amount from the \$2,425.00 in fees incurred while counsel spent 9.7 hours prosecuting a modified plan and motion to incur debt.

FEES AND COSTS & EXPENSES ALLOWED

The unique facts surrounding the case, including counsel prosecuting a modified plan and motion to incur debt, raise substantial and unanticipated work for the benefit of the Estate, Debtors, 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 \$2,000.00 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 Stutz Law Office, P.C., 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 Stutz Law Office, P.C. is allowed the following fees and expenses as a professional of the Estate:

Stutz Law Office, P.C., Professional Employed by the debtors Jeffrey William Cook and Christina Lee Cook,

Fees in the amount of \$2,000.00,

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.

4. [21-20450](#)-C-13 SHARON MILLER
[MRL](#)-1 Mikalah Liviakis

MOTION TO MODIFY PLAN
5-17-21 [[22](#)]

Thru #5

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 27.

The Motion to Modify is XXXXXXXX

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.

However, the court notes that the Modified Plan may rely on the debtor's Motion To Use Cash Collateral.

At the hearing, XXXXXXXXXXXXXXXX

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

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

The Motion to Modify Plan filed by the debtor, Sharon Lynn Miller, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is XXXXXXXX

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 29 days' notice was provided. Dkt. 31.

The Motion for Authority to Use Cash Collateral is XXXXXX

The debtor filed this Motion seeking authority to use \$9,768.80 in insurance proceeds to purchase a new vehicle. Said proceeds resulted from a "total loss" collision involving the debtor's 2013 Honda Accord, which vehicle secured AutoMax Enterprises Inc.'s claim.

The Motion notes that a new plan was filed changing treatment of AutoMax Enterprises Inc.'s claim to a Class 3. The debtor suggests granting a replacement lien to AutoMax Enterprises Inc. in any new vehicle.

DISCUSSION

The Motion seems to contradict the claim treatment in the debtor's newly filed plan. If the debtor is surrendering the collateral, the debtor is either providing the insurance proceeds or the new vehicle to the creditor in satisfaction of the secured portion of the claim.

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 for Authority to Use Cash Collateral filed by the debtor Sharon Lynn Miller having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is XXXXXXXXXX

No Tentative Ruling:

The 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. 30.

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:

1. The debtors did not attend the May 27, 2021, Meeting of Creditors.
2. The attorney fees in the Chapter 13 plan are \$6,000, contradicting the \$4,000 fee represented in the Rights & Responsibilities.
3. The plan was not signed by debtors' counsel.
4. The debtors are making a \$203.00 voluntary retirement contribution.

DISCUSSION

A review of the docket shows that the debtors attended the continued Meeting of Creditors on June 10, 2021, but that counsel for the debtors did not.

The docket also shows that the trustee has a Motion To Dismiss (Dkt. 31) scheduled to be heard the same day as the hearing on this Motion.

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 XXXXXXXXXXXX

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 54.

The Motion to Modify is ~~xxxxxxx~~

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

The trustee filed an Opposition on June 1, 2021, opposing confirmation because the debtor is \$1,280.00 delinquent in plan payments.

DISCUSSION

The trustee's sole ground for opposition is a \$1,280.00 plan payment delinquency, which indicates the plan is not feasible.

At the hearing, the parties reported whether the delinquency remains
~~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 Modify Plan filed by the debtor, Dawn Marie Barkley, 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~~

8. [18-27165](#)-C-13 EDWARD HOILMAN AND LISA MOTION TO INCUR DEBT
[BLG](#)-2 MCCURRY-HOILMAN 6-8-21 [[61](#)]
Chad Johnson

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. 65.

The Motion to Incur Debt is granted.

The debtors filed this Motion seeking authority to incur debt to purchase real property located at 11796 Azalea Garden Way, Rancho Cordova, California.

The new debt is in the principal amount of \$553,784.00, paid at 3.5 percent interest over 30 years. The monthly payment is estimated to be \$3,772.00.

DISCUSSION

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

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

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

The Motion to Incur Debt filed by the debtors, Edward Hoilman and Lisa McCurry-Hoilman having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(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 & 25 HEARINGS

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.

At the continued May 25, 2021, the sufficiency of the debtors' filed documents was addressed. The court granted a continuance to allow the debtor to attend the 341 Meeting and for all documents to be filed.

DISCUSSION

At the hearing, ~~xxxxxxxxxxxxxxxx~~

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

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

The Motion to 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**

10. [19-27468](#)-C-13 EDDIE/CARYN GARDNER
[AP-1](#) Peter Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-18-21 [[122](#)]

HSBC BANK USA, NATIONAL
ASSOCIATION 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 35 days' notice was provided. Dkt. 128.

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

HSBC Bank SA, National Association as Trustee for Ellington Loan Acquisition Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 ("Movant") filed this Motion seeking relief from the automatic stay as to the debtors' real property located at 9475 Mandrake Court, Elk Grove, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors are delinquent 3 postpetition payments. Declaration, Dkt. 125. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$493,726.72, exceeds the value of the Property, which is \$471,844.00. Id.

TRUSTEE'S RESPONSE

The trustee filed a Response on June 7, 2021. Dkt. 131. The Response reports that the debtors are \$11,941.00 delinquent in plan payments, and that \$43,128.37 has been distributed to Movant as a Class 1 claim holder under the confirmed plan.

DEBTOR'S OPPOSITION

The debtors filed an Opposition on June 7, 2021. Dkt. 133. The debtors argue that the value of their home is now \$689,000.00, leaving a significant equity cushion. The debtors also report that they incurred additional expenses due to COVID-19, and that a modified plan is being proposed to bring payments current.

The debtors request the Motion be denied, or continued to the confirmation hearing for the Modified Plan.

DISCUSSION

The issues of whether there is lack of adequate protection or absence of equity depend on the value of the Property, which the debtors argue is \$689,000.00 and Movant argues is \$471,844.00.

Federal Rule of Bankruptcy Procedure 9014(d) provides that testimony

of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding.

At the hearing, the parties addressed whether this Contested Matter should be set for evidentiary 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 for Relief from the Automatic Stay filed by HSBC Bank SA, National Association as Trustee for Ellington Loan Acquisition Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 ("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 **xxxxxxxxxx**

11. [21-21083](#)-C-13 BIREN/KAMLESH PRASAD
[RDG](#)-1 Gabriel Liberman

CONTINUED 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 indicate 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.

DEBTORS' RESPONSE

The debtors filed a Response on June 16, 2021. Dkt. 23. The Response represents:

1. The debtors filed their 2020 tax returns and are receiving \$2,506 from the IRS and \$333.00 from FTB for a total refund of \$2,839, a difference of \$61.00 less than anticipated.
2. The debtors filed amended schedules I and J. Prior to the case being filed, the debtors received a raise which was not accounted for in Schedule I. The debtors also did not list mileage reimbursement of \$600 per month.

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 22, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 43 days' notice was provided. Dkt. 143.

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 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 Modify Plan filed by the debtors, Laura Elizabeth England and Donald Lee England, 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's Modified Chapter 13 Plan filed on May 10, 2021 (Dkt. 142) 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.