

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

**July 13, 2021 at 1:30 p.m.**

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

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1.	<a href="#"><u>21-21204</u></a> -C-13	KEVIN PICKETT	CONTINUED OBJECTION TO
	<a href="#"><u>RDG</u></a> -1	James Keenan	CONFIRMATION OF PLAN BY TRUSTEE
			RUSSELL D. GREER
			5-18-21 [ <a href="#"><u>16</u></a> ]

**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.

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXX</span></b>
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The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor 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**

At the prior hearing, the court granted a continuance for the debtor to refile his Amended Schedules because the Amended Schedule J filed was incomplete.

A review of the docket shows those Amended Schedules were filed June

**July 13, 2021 at 1:30 p.m.**

**Page 1 of 30**

10, 2021. Dkt. 26.

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 xxxxxxxxxxxx

2. [20-24912](#)-C-13 JAVIER CASTELLANOS AND MOTION TO CONFIRM PLAN  
RJ-5 ALEJANDRA ALCANTAR 5-21-21 [[86](#)]  
Richard Jare

**Final Ruling:** No appearance at the July 13, 2021 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 53 days' notice was provided. Dkt. 91.

**The hearing on the Motion is continued to August 10, 2021,  
at 1:30 p.m.**

The debtors filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 89) filed on May 21, 2021.

The trustee filed an Opposition (Dkt. 98) on June 28, 2021, opposing confirmation on the following grounds:

1. The plan provides for Class 2 claimholders to receive increased dividends "no later than month 15" and "no later than month 26," but does not actually specify when the increases should commence.
2. The debtors' Form B22C has not been prepared correctly because the debtors have included business expenses.
3. The trustee has requested, and the debtors have yet to provide, a copy of their liability and worker's compensation riders, if appropriate, for Home Run Cleaning LLC.
4. The trustee has requested, and the debtors have yet to provide, evidence supporting the debtors' valuation of their corporation, AAA Cleaning Service, and a list of corporate assets and obligations.
5. The debtors may owe debts to the IRS and FTB as a result of unfiled taxes for their corporation, AAA Cleaning Service. The California Secretary of State website reports that the corporation has been suspended by the FTB.
6. The debtors report they have created a new entity Home Run Cleaning Service, LLC and the Trustee presumes the debtors are the sole members of the LLC. However, the Trustee has been unable to locate the LLC on the website of the California Secretary of State. The trustee requests the debtors provide the following:

- a. Documents evidencing the formation of the LLC;
- b. Evidence that the LLC is properly registered in California;
- c. The Tax ID number for the LLC; and
- d. Evidence regarding the assets used to fund the LLC at its inception.

DEBTOR'S REPLY

The debtor filed a Reply on July 9, 2021, requesting a continuance of a few weeks due to the unavailability of debtor's counsel. Dkt. 103.

**DISCUSSION**

In light of the debtor's request, and good cause appearing, the court shall continue the hearing to August 10, 2021, at 1:30p.m.

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, Javier Suarez Castellanos and Alejandra Alcantar, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion is continued to August 10, 2021, at 1:30 p.m.

**Final Ruling:** No appearance at the July 13, 2021 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 53 days' notice was provided. Dkt. 80.

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 hearing on the Motion is continued to September 28, 2021, at 1:30 p.m.**

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 78) filed on May 21, 2021.

The trustee filed an Opposition on June 14, 2021, arguing the plan is not feasible because the plan payment is insufficient in months 9 through 36, and because the plan relies on a permanent loan modification which has yet to be executed and approved by the court. Dkt. 84.

The debtor filed a Response on June 21, 2021, providing a detailed mathematical analysis showing that the proposed \$202.85 payment in months 9 through 36 is sufficient. Dkt. 87. The Response also concedes that the plan relies on a permanent loan modification, and requests the hearing on this Motion be continued to September.

The trustee filed a Supplemental Reply on June 23, 2021. Dkt. 90. The Supplemental Reply argues that the debtor's analysis understates the unsecured claim total due to a duplicative claim filed by the IRS, and mistakenly represents that the IRS' priority claim of \$1,516.82 has already been paid. The trustee reasserts that the plan payment is insufficient, but agrees with a continuance of the hearing on this Motion to September to allow the debtor to obtain the permanent loan modification.

#### **DISCUSSION**

In light of the debtor's request, and good cause appearing, the court shall continue the hearing to allow the debtor to obtain the permanent loan modification.

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

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

The Motion to Confirm filed by the debtor, Stacie

Renae Pradie, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion is continued to September 28, 2021, at 1:30 p.m.

4. [20-22719](#)-C-13 LUCY PATTEN  
[RDG](#)-2 Allan Frumkin

OBJECTION TO CLAIM OF COUNTY OF  
SACRAMENTO UTILITIES, CLAIM  
NUMBER 10  
5-24-21 [[67](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 50 days' notice was provided. Dkt. 69.

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

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

The deadline for filing proofs of claim in this case is August 5, 2020. Notice of Bankruptcy Filing and Deadlines, Dkt. 15. The Proof of Claim subject to this Objection was filed April 30, 2021.

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

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 10 of County of Sacramento Utilities is sustained, and the claim is disallowed in its entirety.

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 41 days' notice was provided. Dkt. 27.

**The Motion to Modify is XXXXXXX**

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 24) filed on June 2, 2021.

The trustee filed an Opposition (Dkt. 28) on June 14, 2021, opposing confirmation on the following grounds:

1. The modified plan provides for the County of Sacramento Tax Collector's claim as a Class 2 totaling \$17,749.00 paid at \$335.00 per month. But, the Proof of Claim filed by that creditor supports the claim being paid pro rata as a Class 5 priority claim in the amount of \$39,893.57. The trustee is therefore unable to administer Section 3.08 of the plan (equal monthly payments to Class 2A and B claimholders).
2. Confirmation of the debtor's prior plan was contingent upon the debtor providing his State and Federal Tax Returns to the trustee on or before April 30 each year during the pendency of this case and also turnover all tax refunds as additional payments into the plan. As of June 14, 2021, the debtor has not provided his 2020 Federal and State Tax Returns to the trustee or turned over any tax refunds, if necessary. Additionally, the modified plan should include this provision.

**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 Motion to Confirm filed by the debtor, Douglas P. Brauner, 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~~

6. [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.

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXXX</span></b>
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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~~

**Final Ruling:** No appearance at the July 13, 2021 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 40 days' notice was provided. Dkt. 37.

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

**The Motion to Confirm is granted.**

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 35) filed on June 9, 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, Heather Michelle Grey, 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 (Dkt. 35) 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.

8. [21-21656](#)-C-13 TEMA ROBINSON  
[PGM](#)-2 Peter Macaluso

MOTION TO VALUE COLLATERAL OF  
WHEELS FINANCIAL GROUP LLC  
6-9-21 [[22](#)]

**Thru #9**

**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 34 days' notice was provided. Dkt. 26.

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 xxxxxx.**

The debtor filed this Motion seeking to value the portion of Wheels Financial Group LLC dba 1800LoanMart's ("Creditor") claim secured by the debtor's property commonly known as a 2005 Dodge Ram 1500 (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$4,000.00. Declaration, Dkt. 24.

**CREDITOR'S OPPOSITION**

The Creditor filed an Opposition on June 29, 2021, arguing that the debtor undervalued the Property and requesting an evidentiary hearing.

**DEBTOR'S REPLY**

The debtor filed a Reply on July 6, 2021. Dkt. 38. The debtor argues there is no admissible evidence, and because there is no admissible evidence there is no factual dispute requiring an evidentiary hearing.

**DISCUSSION**

The parties contest the value of the Property. 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. Because there is a disputed material fact, the Matter must be set for evidentiary hearing.

At the hearing, xxxxxxxxxxxxxxxx

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

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

The 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 is **xxxxxxxxxx**

9. [21-21656](#)-C-13 TEMA ROBINSON  
[RDG](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
6-15-21 [[29](#)]

**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 28 days' notice was provided. Dkt. 32.

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXX</span></b>
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The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that the plan relies on the outcome of the debtor's Motion To Value (Dkt. 22).

A review of the docket shows the Motion is being opposed by the creditor whose secured claim is proposed to be valued.

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 XXXXXXXX

10. [18-22164](#)-C-13 DAWN BARKLEY  
[MJD](#)-4 Matthew DeCaminada

MOTION FOR COMPENSATION BY THE  
STUTZ LAW OFFICE, P.C. FOR  
MATTHEW J. DECAMINADA, DEBTORS  
ATTORNEY(S)  
5-27-21 [[56](#)]

**Final Ruling:** No appearance at the July 13, 2021 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 47 days' notice was provided. Dkt. 62.

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).

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Stutz Law Office, P.C., the Attorney ("Applicant") for Dawn Marie Barkley, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period March 14, 2019, through May 27, 2021. Applicant requests fees in the amount of \$1,000.00.

#### **FEES ALLOWED**

The unique facts surrounding the case, including prosecution of a modified plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,000.00 is 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. ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



**IT IS ORDERED** that 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 Dawn Marie Barkley ("Debtor")

Fees in the amount of \$1,000.00,

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.

**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 debtor's 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**

12. [19-27468](#)-C-13 EDDIE/CARYN GARDNER  
[AP-1](#) Peter Macaluso

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

HSBC BANK USA, NATIONAL  
ASSOCIATION VS.

Thru #13

**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 parties agreed to a continuance at the prior hearing to allow the debtor to prosecute a modified plan.

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 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**

**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. 141.

**The Motion to Modify is XXXXX**

The debtors filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 140) filed on June 7, 2021.

**TRUSTEE'S OPPOSITION**

The trustee filed an Opposition (Dkt. 144) on June 14, 2021, opposing confirmation because the modified plan does not provide all disposable income into the plan. The current plan provided for a plan payment increase after a retirement loan is paid off; the modified plan does not propose an increase upon repayment in full of the retirement loan.

**DEBTORS' REPLY**

The debtors filed a Reply on July 6, 2021. Dkt. 149. The debtors' counsel argues the debtors are proceeding in good faith, that the amended schedules no longer include a retirement loan, and that "the retirement loans were finished being paid as the costs associated with the pandemic increased their expenses so that their was no disposable income to contribute to the Trustee."

**DISCUSSION**

Despite the representations of debtors' counsel, Supplemental Schedule I reflects a \$553.43 monthly retirement loan repayment, and Supplemental Schedule J states "401K loan will be paid in 28 months." Dkt. 142.

At the hearing, xxxxxxxxxxxxxxxx

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

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

The Motion to Confirm filed by the debtors, Eddie Gardner and Caryn Gardner, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 26.

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

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

1. The trustee has requested, and the debtor has yet to provide, 2020 tax returns. At the Meeting of Creditors the debtor reported expecting to owe 2020 taxes.
2. The debtor's pay advices show a \$140 voluntary retirement contribution, and the debtor reported at the Meeting of Creditors this contribution has not ceased.

**DISCUSSION**

The trustee reports that the debtor has not provided a copy of his most recent tax return, as required 11 U.S.C. § 521(e)(2)(A)(I). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Additionally, the debtor's \$140 voluntary retirement contribution is evidence that the debtor is not providing all disposable income into the plan, which is further reason to deny confirmation. 11 U.S.C. § 1325(b)(1).

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 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 sustained.

15. [21-21875](#)-C-13 KIMBERLY BRADLEY  
[GAL](#)-1 Steele Lanphier

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION TO  
HAVE IN REM RELIEF FROM STAY  
5-27-21 [[9](#)]

FARMERS NATIONAL BANK VS.

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 47 days' notice was provided. Dkt. 14.

**The Motion for Relief from the Automatic Stay is granted.**

Farmers National Bank ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 2016 Ford Explorer (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent 20 postpetition payments. Declaration, Dkt. 11. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$35,090.27, exceeds the value of the Property, which is \$24,000.00. Id.

On Schedule A/B, the debtor values the vehicle at \$25,000.00. Dkt. 26. On Schedule D, the debtor lists Movant's debt at \$29,000.00. Id.

Movant also seeks 11 U.S.C. § 362(d)(4) In Rem relief on the grounds that the debtor filed this case as part of a scheme to delay, hinder, or defraud creditors that involved multiple filings (19-22798, dismissed 8/28/2019 for failure to pay the filing fees; 19-26165, dismissed 3/17/2021 for plan payment delinquency; and 21-21002, dismissed 4/22/2021 for failure to timely file documents).

**TRUSTEE'S RESPONSE**

The trustee filed a Response on June 24, 2021, noting the Meeting of Creditors is scheduled for July 8, 2021; that a confirmation hearing is set for August 10, 2021; that Movant's claim is treated as a Class 2 in the proposed plan; and that the debtor has paid \$1,200.00 to date in plan payments.

**DISCUSSION**

Upon review of the record, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent postpetition payments. The court also finds cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$35,090.27, exceeds the value of the Property, which is at most \$25,000.00.

The court also finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy



filings affecting the Property, and therefore relief is also granted pursuant to 11 U.S.C. § 362(d)(4).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests the court waive this stay without explaining what cause there is for waiver. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

This part of the requested relief is not granted.

No other or additional relief is granted by the 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 for Relief from the Automatic Stay filed by Farmers National Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Property, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Ford Explorer ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), the court having found that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, this order shall be binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of this Order.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived.

No other or additional relief is granted.

16. [21-20476](#)-C-13 CYNTHIA MARTIN  
[RDG](#)-1 Julius Cherry

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
4-5-21 [[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 36 days' notice was provided. Dckt. 15.

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

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan because the California Department of Tax and Fee Administration filed a proof of claim establishing a \$85,561.66 secured claim, which is greater than the \$42,000.00 claim anticipated in the plan.

Without the debtor objecting to that proof of claim, the higher amount will control and the plan will not be feasible. 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 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 sustained.

17. [21-22079](#)-C-13 MUSTAPHA CHAM  
[CJC](#)-101 Anh Nguyen

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-10-21 [[15](#)]

OP ELEVEN HUNDRED OWNER, LLC  
VS.

**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 33 days' notice was provided. Dkt. 20.

**The Motion for Relief from the Automatic Stay is granted.**

OP ELEVEN HUNDRED OWNER, LLC ("Movant"), filed this Motion seeking relief from the automatic stay with respect to the real property commonly known as 1100 Howe Avenue #279, Sacramento, California ("Property"), to allow an unlawful detainer action to be litigated in state court.

Movant argues relief is warranted under 11 U.S.C. § 362(d)(1) and (d)(2) because the debtor does not have an ownership interest in or a right to maintain possession of the Property. Declaration, Dkt. 17.

Upon review of the record, the court finds Movant has presented a colorable claim for title to and possession of this real property. Cause for relief exists pursuant to 11 U.S.C. § 362(d)(1) to allow the unlawful detainer action to be litigated on the merits in a court of competent jurisdiction.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Movant has also pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by OP ELEVEN HUNDRED OWNER, LLC ("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 vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1100 Howe Avenue #279, Sacramento, California.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

18. [21-20787](#)-C-13 MARY ANN LEWIS-JOHNSON MOTION TO CONFIRM PLAN  
FF-1 AND AMOS JOHNSON 5-27-21 [[23](#)]  
Gary Fraley

**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. 27.

**The Motion to Confirm is denied.**

The debtors filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 26) filed on May 27, 2021.

The trustee filed an Opposition (Dkt. 34) on June 23, 2021, opposing confirmation because the debtors are \$710.00 delinquent in plan payments.

**DISCUSSION**

A plan payment delinquency constitutes evidence that the plan is not feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

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

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

The Motion to Confirm filed by the debtors, Mary Ann Lewis-Johnson and Amos James Johnson, 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.