

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 21, 2020 at 1:30 p.m.

1.	20-22010 -C-13	VIOLET SOMERA	CONTINUED OBJECTION TO
	RDG-1	Mikalsh Liviakis	CONFIRMATION OF PLAN BY RUSSELL
			D. GREER
			6-23-20 [21]

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. Dckt. 23.

<p>The Objection to Confirmation of Plan is overruled.</p>

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

1. Debtor testified at her 341 Meeting of Creditors that she has been receiving unemployment since January 2020. This income has not been disclosed on Schedule I or Form 122C and has not been addressed in the Debtor's plan.

2. Debtor's plan provides for Santander Consumer USA as a Class 2 claim in the amount of \$17,200.00 to be paid at 6.00% interest, a monthly dividend of \$332.52. Chrysler Capital (listed as Santander Consumer USA in plan) has filed a claim (Proof of Claim 3-1) indicating the amount due is actually \$18,808.06. Under the plan terms the plan would take 67 months.

3. Debtor's plan provides for a monthly plan payment of \$570.00. Trustee's calculations indicate that Debtor's plan payment will need to be at least \$610.00 in order for Debtor's plan to be feasible as proposed paying unsecured creditors 2.50%.

4. Debtor's Statement of Financial Affairs lists a transfer of real property located at 9740 Miketo Way in Elk Grove, California. Debtor testified at her 341 Meeting of Creditors that the transfer of home was to her son. Trustee requests documentation regarding the date and details of the transfer.

JULY HEARING

At the July 7, 2020, hearing the parties reported that the only remaining ground for objection was debtor's inaccurate Schedule I. The hearing was continued to allow Debtor to file an amendment. Dckts. 24, 25.

DISCUSSION

A review of the docket shows debtor filed Amended Schedule I on July 7, 2020, which includes unemployment compensation of \$3,675 a month. Dckt. 26.

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 ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Violet Zabala Somera's ("Debtor") Chapter 13 Plan filed on April 9, 2020, is confirmed. Counsel for 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.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 50 days' notice was provided. Dckt. 28.

The Motion to Confirm the Amended Plan is ~~xxxxxx~~.

The debtor filed this Motion To Confirm the first amended plan on June 1, 2020. Dckt. 27. The plan provides that \$1,500 has been paid thus far, and payments of \$1,437.19 will commence July 25, 2020 and continue for the remainder of the 60 month plan term. Dckt. 27. The plan also provides that payments to Wells Fargo shall commence August 1, 2020 (because that claim is presently in forebearance), that attorney's fees shall be paid prior to Class 1 and 7 claims, and that unsecured claims totaling \$5,372.00 shall receive a 0.5 percent dividend.

Trustee's Opposition

The Chapter 13 trustee filed an Opposition on June 22, 2020. Dckt. 35. The trustee argues that because Class 1 claims are paid after attorney fees, that the claim of Wells Fargo actually does not commence until month 6 of the plan. The trustee also argues that the \$598.74 monthly prepetition arrearage dividend to Wells Fargo is enough to pay off the \$35,924.44 arrearage in 60 months, meaning the plan cannot complete in 60 months if payments to Wells Fargo do not commence until month 6.

Debtor's Reply

Debtor's counsel filed a Reply on July 6, 2020, indicating he is amenable to being paid a lower monthly amount so long as he is paid before the plan completes. Debtor's counsel also notes that a major obstacle to the case was overcome when the IRS amended the proof of claim to reduce the priority amount from \$13,636.69 to \$2,175.82.

Debtor's counsel requests that monthly payment issues be worked out in the order confirming plan.

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 Confirm the Amended Chapter 13 Plan filed by the debtor, Patrick Guy Mammolite and Pensri

Salaswat Mammolite ("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 to Confirm the Amended Plan is **xxxxxxxx**

3. [20-22623](#)-C-13 MICHAEL BARKALOW AND OBJECTION TO CONFIRMATION OF
[RDG](#)-1 JOLIE PERCIVAL PLAN BY RUSSELL D. GREER
Scott D. Hughes 6-29-20 [[31](#)]

Final 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. Dckt. 34.

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 Objection to Confirmation of Plan is overruled as moot.

The Chapter 13 trustee filed this Objection To Confirmation on June 29, 2020. Thereafter, the debtor filed an amended plan and corresponding Motion To Confirm, making this Objection moot. Dckt. 41, 43.

Therefore, the Objection is overruled.

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 as moot.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 42 days' notice was provided. Dckt. 35.

The Motion to Confirm the Amended Plan is ~~xxxxxx~~.

The debtor filed this Motion To Confirm the first amended plan on June 9, 2020. Dckt. 31. The plan provides for payments of \$970 for 4 months and then \$1,070 for 56 months. Dckt. 27. The plan also provides that unsecured claims totaling \$19,017.00 shall receive a 100 percent dividend.

Trustee's Opposition

The Chapter 13 trustee filed an Opposition on June 29, 2020. Dckt. 40. The trustee estimates that unsecured claims will total \$25,481.71 based on claims filed, and that the plan payment would need to be increased to \$1,175.82 (average over the life of the plan) to pay 100 percent of claims.

Debtor's Reply

Debtor's counsel filed a Reply on July 7, 2020. Dckt. 42. Counsel argues that there are 4 stale claims filed in this case the debtor plans to object to once the Notice of Filed Claims are submitted by the trustee. Counsel argues further that it is premature to sustain the objection given that the Notice of Filed Claims has not been filed.

Discussion

While the trustee indicates an estimate of \$25,481.71 for unsecured claims, no analysis has been proffered, and no evidence was filed to support the claim. It is unclear whether the trustee reached this estimate when accounting for claims barred by the statute of limitations.

Additionally, it is unclear whether debtor would be able to make the increased payments or not if necessary.

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 the Amended Chapter 13 Plan filed by the debtor, Cedric Wayne Grant and Pamela Renee Grant ("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 to Confirm the Amended
Plan is ~~XXXXXXXX~~

5. [20-21329](#)-C-13 TONYA SMITH
[ABV](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-24-20 [[15](#)]

CIVIC VENTURES, LLC VS.
DEBTOR DISMISSED: 03/24/2020

Final Ruling: No appearance at the July 21, 2020, hearing is required.

On July 9, 2020, the court issued an Order granting this Motion For Relief From Automatic Stay. Dckt. 74. The Motion having been decided, the court removes this matter from the calendar.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 24 days' notice was provided. Dckt. 44.

The Motion to Confirm the Amended Plan is ~~xxxxxx~~.

The debtor filed this Motion To Confirm the first amended plan on June 9, 2020. Dckt. 31. The plan provides for payments of \$200 for 36 months and a 0 percent dividend to unsecured claims totaling \$110,738.64. Dckt. 43.

Trustee's Opposition

The Chapter 13 trustee filed an Opposition on June 15, 2020. Dckt. 48. Trustee opposes confirmation because he has requested and debtor has not provided (1) copies of Debtor's 2019 personal Federal and State Tax Returns, and (2) payment advices for Debtor from Placer Crossfit.

Debtor's Reply

Debtor's counsel filed a Reply on June 30, 2020. Dckt. 50. Counsel argues that the tax returns have been provided to the trustee. Counsel argues further that debtor is unemployed now, but expects to return in August 2020.

July 7 Hearing

At the July 7, 2020, hearing, the trustee noted that the remaining ground for opposition was the Federal and State Tax Returns, which trustee had not received despite Debtor's Reply indicating otherwise. Civil Minutes, Dckts. 53, 54.

Discussion

At the hearing, the parties reported whether the tax returns have been received ~~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 the Amended Chapter 13 Plan filed by the debtor, Thomas Michael Kim ("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 to Confirm the Amended
Plan is **xxxxxxx**

Final Ruling: No appearance at the July 21, 2020, hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 40 days' notice was provided. Dckt. 67.

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.

The debtor's daughter Veronica Dawson-Lacy filed this Motion seeking approval to substitute as representative for the debtor, who passed away on April 20, 2020. Dckt. 62.

The Motion is filed pursuant to Federal Rule of Bankruptcy Procedure 1016 which allows if the case to 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. Substitution is sought pursuant to Federal Rule of Civil Procedure 25, as incorporated by Federal Rule of Bankruptcy Procedure 7025.

The Motion also requests the court waive the 11 U.S.C. § 1328 counseling and certification requirements, and argues that the Final Report and Account was issued on September 28, 2019, and this case is awaiting discharge.

Chapter 13 Trustee's Response

The Chapter 13 trustee filed a Response on June 29, 2020, noting that the case is in month 35 of 60 months, and debtor is therefore not "awaiting discharge." Dckt. 70. But, there trustee does not otherwise express opposition.

Debtor's Reply

The debtor filed a Reply on July 13, 2020, conceding the case has not been completed and noting a modified plan will be filed so the case can be completed.

Discussion

Federal Rule of Civil Procedure 25 allows substitution so long as the motion is made within 90 days after service of a statement noting the death. FED. R. CIV. P. 25(a)(1). The Statement Noting Death was filed May 4, 2020, and this Motion was filed June 11, 2020, within 90 days. Dckts. 62, 64.

Upon review of the record the court finds that continued administration of the Chapter 13 case with debtor's daughter acting as substitute representative is possible and in the best interest of creditors after the passing of the debtor. Additionally, the court finds that given the death of the debtor cause exists to waive the requirements of 11 U.S.C. § 1328.

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 Veronica Dawson-Lacy 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 Veronica Dawson-Lacy is substituted as the successor-in-interest to Minnie Dawson 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 and post-petition education requirements for entry of discharge are waived.

8. [20-22451](#)-C-13 JOSEPH/LILLIAN COY
[RDG](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-29-20 [[17](#)]

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. Dckt. 20.

The Objection to Confirmation of Plan is XXXXXXX
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The Chapter 13 trustee filed this Objection opposing confirmation on the basis that the debtor did not attend the 341 Meeting of creditors on June 25, 2020.

A review of the docket shows that debtor and debtor's counsel attended the continued 341 Meeting on July 16, 2020, and the Meeting was concluded.

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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

IT IS ORDERED that the Objection is XXXXXXXXXXXX

9. [20-22653](#)-C-13 NOEL LASCANO
[RDG](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-29-20 [[19](#)]

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. Dckt. 22.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 trustee opposes confirmation of the plan on the basis that (1) the plan proposes valuing the secured claim of Lendmark Financial Services and is not feasible until that claim has been valued; and (2) debtor testified at the 341 Meeting that he is now unemployed and only receives unemployment income.

Both grounds show the plan is not presently 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 to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

10. [18-25756](#)-C-13 DAVID SIMS
[KAZ](#)-3 Peter Macaluso

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
5-20-20 [[193](#)]

BOSCO CREDIT LLC VS.

Thru #11

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 61 days' notice was provided. Dckt. 199.

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

Bosco Credit, LLC filed this Motion seeking relief from the automatic stay as to debtor's real property known as 3615 6th Ave., Sacramento, California.

Movant argues relief is warranted pursuant to 11 U.S.C. § 362(d)(1) because debtor has missed 3 postpetition payments, which allegation is support by declaration. Dckt. 196.

Movant also argues relief is warranted under 11 U.S.C. § 362(d)(2) because the value of the property listed on Schedule A/B is only \$300,000.00, leaving no equity in the property after accounting for the \$287,425.46 in liens and an 8 percent cost of sale.

Debtor's Opposition

The filed an Opposition on June 22, 2020. Dckt. 212. Debtor argues the property is worth \$600,000, leaving over \$250,000 in equity. Debtor also argues adequate protection payments are being made via reclassifying the claim as Class 1.

Trustee's Response

The Chapter 13 trustee filed a Response on June 2, 2020. Dckt. 204. The trustee does not express a position, but summarizes the case history thus far.

Movant's Reply

Movant filed a Reply on June 24, 2020. Dckt. 216. Movant argues (1) debtor has not met debtor's burden to show equity in the property and that it is necessary for reorganization; (2) debtor is bound by the \$300,000 valuation listed in Schedule A; and (3) Debtor has not made all of the required post-petition payments.

Movant also filed a list of evidentiary objections. Dckt. 218.

Discussion

At outset, the court notes that the Movant provides an incorrect recitation of the law, stating "For motions based upon 11 USC § 362(d)(2), a debtor must show equity in the property, and that the property is necessary for reorganization." The Bankruptcy Code plainly provides that "[Movant] has the burden of proof on the issue of the debtor's equity in property." 11 U.S.C. § 362(g).

Additionally, 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. If the parties are disputing the value of the property and the Motion depends on that value, an evidentiary hearing must be set. The argument that the debtor must be bound by the original valuation stated on Schedule A/B can be made at such a hearing.

At the hearing, **xxxxxxxxxxxxxx**.

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 Bosco Credit, 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 **xxxxxxxxxx**

No other or additional relief is granted.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 40 days' notice was provided. Dckt. 210.

The Motion to Confirm the Amended Plan is ~~xxxxxx~~.

The debtor filed this Motion To Confirm the first amended plan on June 11, 2020. Dckt. 31. The plan provides for \$49,500.00 through May 2019, and for payments of \$3,500 a month for 6 months. Dckt. 209. To complete the plan, the Nonstandard provisions provide for a lump sum either in October 2020 from a refinance, or in November 2020 from a sale.

Trustee's Opposition

The Chapter 13 trustee filed an Opposition on June 29, 2020. Dckt. 222. Trustee opposes confirmation on the following grounds:

1. The debtor has misstated the amounts paid into the plan through May 2019. The correct amount is \$52,500.00
2. The proposed plan payments of \$3,500.00 per month are slated to begin June 25, 2019 for six months. This is incorrect. The correct date should be June 25, 2020
3. The proposed plan calls for a refinance generating sufficient funds to pay the plan in full by October 25, 2020. The plan appears to propose a sale of the property by November 25, 2020 should the refinance fail to materialize. These provisions are unclear and require clarification
4. Post petition arrears are incorrectly stated as to Class 1 creditor Franklin/Bosco at \$8,657.71. The correct amount is \$5,062.64.
5. A lump sum payment of \$160,500.00, or the amount necessary to complete the plan is required to pay general unsecured claims a 100% dividend as proposed. This language should be included in an order confirming the plan.

Bosco Credit LLC's Objection

Bosco Credit LLC filed an Objection on July 7, 2020. Dckt. 224. Bosco Credit LLC argues the following:

1. Debtor has default in postpetition payments and

thereby has not complied with 11 U.S.C. § 1326(a)(1).

2. The plan does not propose to pay Bosco Credit LLC's claim in equal monthly payments.
3. Debtor's income stated on Schedule I includes rental income of \$1,750.00, which has previously been shown to be speculative. Therefore the plan is not feasible.
4. The plan relies on refinancing or sale of the debtor's home, which is speculative.
5. The plan was not proposed in good faith because prior plans with the same terms have been denied confirmation.
6. Given COVID-19 and the risk that housing prices will fall, debtor should not be permitted to make a balloon payment.

Debtor's Reply

Debtor's counsel filed a Reply on July 13, 2020. Dckt. 230. Debtor argues that all of the trustee's grounds for opposition are correctable in the order confirming plan. In reply to Bosco Credit LLC, debtor argues the following:

1. The plan complies with 11 U.S.C. § 1326(a)(1) because the court can order the payments commence after 30 days from filing.
2. 11 U.S.C. 1325(a)(5)(B) is met because the plan does pay the creditor the "value, as of the effective date of the plan" by providing an interest rate of pursuant to the contract, and equal monthly payments completing with a lump-sum payment in a reasonable time.
3. The plan complies with 11 U.S.C. § 1326(a)(1) because the creditor has received payments.
4. The debtor is current and has provided documentation that the payment is feasible.
5. The plan calls for a sale on a home that has approximately \$200,000 in equity, is listed and has received his first offer already.
6. The debtor has paid \$52,500.00 since filing, and as a show of good faith has/will be paying \$3,500 until the sale is complete.

Discussion

This case at this juncture is essentially a two party dispute. Since the case commenced in September 2018 the debtor has had a plan to eventually refinance his residence to complete the plan. Also since the beginning of the case, Bosco Credit LLC opposed this plan as speculative.

Bosco Credit LLC now has a pending Motion For Relief From Automatic Stay. Meanwhile, debtor has a Motion To Employ a Realtor (Dckt. 234), and has provided testimony that an offer of \$545,000.00 for the debtor's residence has been received. Dckt. 231.

If debtor has received such an offer, it is unclear why there is no motion to sell pending.

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 the Amended Chapter 13 Plan filed by the debtor, Thomas Michael Kim ("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 to Confirm the Amended Plan is **xxxxxxxx**

12. [20-22357](#)-C-13 TRACY WOOD
[RDG](#)-2 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
6-15-20 [[21](#)]

Final Ruling: No appearance at the July 21, 2020, hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 36 days' notice was provided. Dckt. 23.

No responsive pleading has been filed. Therefore, the court enters the defaults of the respondent and other 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 Objection to Claimed Exemptions is overruled as moot.

The Chapter 13 trustee filed this Objection to all the debtor's exemptions under 11 U.S.C. § 522 claimed on Schedule C.

Thereafter, the debtor filed an Amended Schedule C which only claims exemptions under the California Civil Code of Procedure.

The Objection will therefore be overruled as 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.

13. [20-20775](#)-C-13 EBALINA HERNANDEZ AND OBJECTION TO CONFIRMATION OF
[RDG](#)-1 ALAN TRUJILLO DOMINGUEZ PLAN BY RUSSELL D GREER
Peter Macaluso 4-28-20 [[30](#)]

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. Dckt. 34.

The Objection to Confirmation of Plan is overruled.

The Chapter 13 trustee filed this Objection opposing plan confirmation on the following grounds:

1. Debtors testified at their 341 Meeting of Creditors that they will receive a \$4,200.00 tax refund for 2019. Debtors' 2019 tax refunds have not been listed on Debtors' schedules and have not been claimed exempt on Debtors' schedule C. Accordingly, Trustee is requesting that Debtors provide a copy of their 2019 Federal and State income tax returns for review.
2. Debtors' Schedule A lists debtors' interest in real property located at 5521 Alcott Drive, Sacramento, with a current value of the entire property as \$210,000.00 and the current value of the portion owned by debtors as zero dollars. Trustee has requested a copy of the Deed to the Alcott Drive property.
3. The Additional Provisions of debtors' plan provide that "General unsecured creditors to receive no less than $\$140.35 \times 60 = \$8,421.00$." Trustee is unable to administer this provision.

Debtor's Reply

Debtor's filed a Replies on May 12, 2020 and then June 9, 2020. Dckts. 33, 38. Counsel argues the following:

1. Debtor will file an amendment to Schedule B that provides for the tax refund for 2019.
2. Debtors have provided the Chapter 13 Trustee with a copy of the grant deed of the Alcott Drive property on May 12, 2020 via email.
4. Debtors request that language be added to the Order Confirming the Chapter 13 Plan that states that nonpriority unsecured creditors shall receive a base distribution of \$8,421.00.

5. Debtor has agreed to the Trustee's request to strike language regarding the specific dollar amount that nonpriority unsecured creditors will receive and include only the percentage.

June 16 Hearing

At the June 16, 2020 hearing the court continued the hearing to allow the parties to work on an acceptable order confirming plan for submission. Dckts. 41, 42.

Discussion

At the hearing, the parties reported **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 Confirmation filed by the Chapter 13 trustee, Russel 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 is **xxxxxxxx**

14. [20-22178](#)-C-13 COREY FULK
[MRL](#)-1 Mikalah Liviakis

MOTION TO VALUE COLLATERAL OF
TRAVIS CREDIT UNION
5-29-20 [[14](#)]

Thru #15

Final Ruling: No appearance at the July 21, 2020, hearing is required.

The parties to this contested matter entered a stipulation which was approved by Order of the court on June 16, 2020. Dckt. 23. Because the Motion has been resolved the court will remove this matter from the calendar.

15. [20-22178](#)-C-13 COREY FULK
[RDG](#)-1 Mikalah Liviakis

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-16-20 [[20](#)]

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 31 days' notice was provided. Dckt. 29.

The Objection to Confirmation of Plan is XXXXXXX

The Chapter 13 trustee filed this Objection opposing confirmation on the basis that the plan proposes valuing the secured claim of Travis Credit Union, but that the claim had not yet been valued.

The court continued the July 7, 2020, hearing to allow the debtor's Motion To Value (Dckt. 14) to be resolved. Thereafter, the parties entered into a stipulation determining Travis Credit Union's secured claim to be \$16,000.00. Dckt. 23.

While Travis Credit Union's claim has now been determined, the amount of the claim is \$2,000 more than the \$14,000 claim the plan provides for. Plan, Dckt. 2. It is unclear whether the plan still computes mathematically.

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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

IT IS ORDERED that the Objection is XXXXXXXXXXXX

16. [20-22880](#)-C-13 MARIA CARINO
[MMJ](#)-1 Mikalah Liviakis

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-22-20 [[15](#)]

EXETER FINANCE, LLC VS.

Final Ruling: No appearance at the July 21, 2020, hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 29 days' notice was provided. Dckt. 20.

No responsive pleading has been filed. Therefore, the court enters the defaults of the respondent and other 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 Relief from the Automatic Stay is granted.
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Exeter Finance, LLC filed this Motion seeking relief from the automatic stay with respect to the debtor's 2017 Nissan Altima.

The Movant argues cause for relief exists because the debtor is delinquent 5 prepetition and 6 postpetition payments. Declaration, Dckt. 17. Movant also argues that the debt owed is \$28,957.46, which is greater than the \$14,885.00 value of the vehicle shown on a Kelley Blue Book report filed as Exhibit C. Dckt. 18.

A review of the debtor's Schedules in this case shows the vehicle was repossessed prepetition, and the debtor does not actually list that asset on Schedule A/B. Dckt. 1.

Based on the evidence submitted, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) due to failure to maintain postpetition payments. The court also finds relief is warranted because the debtor has no equity in the vehicle, and the vehicle is not necessary for an effective reorganization.

Therefore, the Motion is granted.

Request for Waiver of Fourteen-Day Stay of Enforcement

The Motion also requests waiver of the stay provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) because there is no equity in the vehicle which is a depreciating asset.

Because the Movant is already in possession of the vehicle and debtor did not file opposition to this Motion, the court finds this relief is also warranted.

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 Exeter Finance, 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 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 debtor's 2017 Nissan Altima, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Nissan Altima, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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.

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. Dckt. 24.

The Objection to Confirmation of Plan is overruled.

The Chapter 13 trustee opposes confirmation of the plan on the basis that it is not feasible. The trustee asserts that the claim of the IRS, reflected by Proof of Claim, No. 12, is \$12,147.60. Because the actual claim is higher than the \$6,589.00 scheduled claim, the Trustee argues the plan payment would need to increase to \$1,051.00 to mathematically compute.

On July 7, 2020, the debtor filed a Response To Objection. Dckt. 25. The debtor agrees to increasing the plan payment by \$111.00 monthly beginning July 2020, which the debtor argues is a modest increase that does not require amended debtor's Schedules I and J to show an ability to pay.

With the proposed increase in plan payments, the trustee's basis for objection has been addressed and the plan appears to comply with 11 U.S.C. §§ 1322 and 1325(a). Therefore, the Objection is overruled.

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 Eric Ingebretsen and Lisa Ingebretsen's Chapter 13 Plan filed on May 13, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, which includes language increasing the plan payment, 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 Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 31 days' notice was provided. Dckt. 16.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 trustee filed this Objection opposing plan confirmation because (1) debtor anticipates a 2019 tax refund which has not been scheduled, and (2) given the substantial refunds trustee requests any confirmed plan require the submission of annual tax returns.

Debtor's Reply

Debtor's counsel filed a Reply on May 29, 2020. Dckt. 17. Counsel argues the refund was received and disbursed prior to filing.

June Hearing

At the June 16, 2020 hearing the trustee reported that insufficient information was provided by debtor as to when the money was received, when it was disbursed, and how it was disbursed. The court agreed that more information is required to establish debtor's good faith, and found debtor's argument that records could not be obtained for closed bank accounts was not credible. Dckts. 20, 21.

By minute order, the court continued the hearing and required debtor to file a supplement to the record by July 7, 2020. Dckt. 21.

Discussion

Despite being inclined to sustain the Objection at the June 2020 hearing, the court granted a continuance to allow debtor to supplement the record. Debtor has not done so.

The debtor has not met her burden to show the plan was filed in good faith. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(1)(a)(6). Additionally, debtor has not complied with her duty under 11 U.S.C. § 521(a)(3) to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties.

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 to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

19. [17-23598](#)-C-13 CURTIS OVERMYER
[PSB](#)-3 Pauldeep Bains

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BAINS LEGAL, PC
FOR PAULDEEP BAINS, DEBTORS
ATTORNEY(S)
6-11-20 [[39](#)]

Final Ruling: No appearance at the July 21, 2020, hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 40 days' notice was provided. Dckt. 43.

No responsive pleading has been filed. Therefore, the court enters the defaults of the respondent and other 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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Pauldeep Bains, the attorney for the debtor in this case filed this Motion seeking approval of compensation of \$1,770, which is in addition to the \$4,000 flat fee approved by the court on July 26, 2017. Dckt. 14.

Counsel represents that debtor suffered unanticipated expenses and increased income which required counsel to spend 5.6 hours prosecuting a motion to incur debt; 0.4 hours drafting a plan modification; 3 hours on this Motion; and 16.2 hours working on general case administration like communications and review of case files.

Of that additional work performed, counsel seeks to be paid for 5.9 hours at counsel's \$300 billing rate.

Applicable Law

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. See *In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Discussion

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 \$1,770.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Russell D. Greer 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.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,770.00
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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 Pauldeep Bains 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 Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:

Pauldeep Bains, counsel for Curtis Lee Overmyer, Jr.

Fees in the amount of \$1,770.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that Russell D. Greer is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(3) notice. The court issued an order shortening the notice period for the Motion, and requiring the Motion and Notice of Hearing be served no later than July 13, 2020. The Proof of Service shows service on that date. Dckt. 63, 64.

The Motion to Sell Property is granted.

The debtor filed this Motion seeking authority pursuant to 11 U.S.C. §§ 363 and 1303 to sell debtor's real property commonly known as 3539 Del Sol Way Sacramento, California (the "Property").

The Residential Purchase Agreement was filed as part of a group of unnamed exhibits. Dckt. 59 at p. 8. A review of the agreement shows the proposed buyers are Ryan Hetrick and Chelsea Grenier, and the price is \$327,000.

The motion indicates both that the sale is "not a sale free and clear of liens," and that liens "are proposed to be paid by the escrow."

The motion also seeks approval of a 6% fee for the real estate brokers' compensation.

It is also noted that debtor has completed the Confirmed Chapter 13 plan. The Chapter 13 trustee's Report and Account was filed September 28, 2019. Dckt. 48.

Discussion

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: ~~XXXXXXXXXXXXXXXXXX~~

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. 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 Sell Property filed by the debtor Alejandro Espitia ("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 Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to Ryan Hetrick and Chelsea Grenier, the Property commonly known as 3539 Del Sol Way Sacramento, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for \$327,000, on the terms and conditions set forth in the Purchase Agreement (Dckt. 59), and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Movant is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase price upon consummation of the sale.

21. [20-21297](#)-C-13 JACKI HUNTER
Randall Ensminger

STATUS CONFERENCE RE: AMENDED
CHAPTER 13 PLAN
7-8-20 [[55](#)]

No Tentative Ruling:

On July 15, 2020, the debtor filed an Ex Parte Application seeking an order shortening time on debtor's Motion To Confirm Second Amended Plan (Dckt. 53), which was filed July 8, 2020. Dckt. 60.

Shortened notice is not sought because insufficient notice was provided. Rather, debtor's counsel argues that debtor is under time constraints, and needs to confirm a plan notwithstanding any small substantive or procedural defect. The time constraint is explained to be that a creditor has obtained relief from stay as to debtor's real property and set a foreclosure sale date of August 28, 2020.

The court issued an Order setting this status conference on July 17, 2020. Dckt. 62.

At the hearing, xxxxxxxxxxxxxxxx.