

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 11, 2020 at 1:30 p.m.

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

1.	<u>19-22300</u> -C-13	LESLIE SAWYER	MOTION OBJECTING TO LATE FILED
	<u>RDG</u> -1	Douglas Broomell	CLAIM
			6-30-20 [<u>41</u>]

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 42 days' notice was provided. Dckt. 43.

<p>The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.</p>
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The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 9, filed by James D. Storms III was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is June 21, 2019. Notice of Bankruptcy Filing and Deadlines, Dckt. 10. The Proof of Claim subject to this Objection was filed April 14, 2020.

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 9 of James D. Storms III is sustained, and the claim is disallowed in its entirety.

Final Ruling: No appearance at the August 11, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 35 days' notice was provided. Dckt. 49.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Confirm is granted.

The debtor filed this Motion To Confirm the first modified plan on July 7, 2020. Dckt. 86. The plan provides for \$8,650.00 paid through July 2020, and for payments of \$2,580 for 52 months. Dckt. 48.

Trustee's Opposition

The trustee filed an Opposition on July 20, 2020. Dckt. 93. The trustee argues the plan is not feasible because the City of Sacramento Utilities, treated as Class 2 in the plan, has not filed a proof of claim and the plan prohibits payment unless a proof of claim has been filed.

Debtor's Reply

The debtor filed a Reply on August 4, 2020 arguing Proof of Claim, No. 3, was filed by debtor on behalf of the City of Sacramento Utilities on August 4, 2020. Dckt. 96.

Discussion

The trustee's sole ground for opposition was resolved when debtor filed Proof of Claim, No. 3, for creditor City of Sacramento Utilities.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtor, Stephanie Muzzi, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's modified Chapter 13 Plan filed on July 7, 2020 (Dckt. 88), 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.

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 46 days' notice was provided. Dckt. 54.

The Motion to Confirm is denied.

The debtor filed this Motion To Confirm the first modified plan on June 25, 2020. Dckt. 49. The plan provides for \$26,060.00 paid through June 8, 2020, then payments of \$1,532.94 for 17 months, \$2,030 for 4 months, and \$2,260 for 60 months. Dckt. 52. The modified plan provides a 10 percent dividend to unsecured claims totaling \$63,471. Id.

Trustee's Opposition

The trustee filed an Opposition on July 22, 2020. Dckt. 67. The trustee opposes confirmation on the following grounds:

1. The plan mathematically requires a payment of \$2,314.82 when considering trustee's fees. Because the plan payment is only \$2,030.00 per month in July 2020 through October 2020, and \$2,260.00 in November 2020 through October 2025, the plan is not feasible.
2. Contrary to the amount stated in the plan, the balance of the pre-petition arrears owed to Class 1 claimant Guild Mortgage totals \$20,786.41. The dividend stated in the plan is insufficient to pay the arrearages in the remaining 64 month term.
3. A Notice of Forbearance Agreement Due to the COVID-19 Pandemic was filed. Dckt. 45. But, the plan is silent as to what agreement, if any, there is as to ongoing mortgage payments.
4. Debtors' attorney did not sign the plan as provided under LBR 9004-1(c)(1).

Discussion

To be confirmed, a plan must be demonstrated to be feasible. 11 U.S.C. § 1325(a)(6). The trustee has provided evidence that the overall plan payment during most of the plan is less than the total of the dividends provided for. Dckt. 68. Therefore, the plan is not feasible.

The plan is also not feasible because the dividend proposed to pay the pre-petition arrears owed to Class 1 claimant Guild Mortgage is

insufficient to pay the arrearages in the remaining 64 month term.

The debtors have also not provided information as to what forbearance agreement there may be with Guild Mortgage, which prevents the court from determining whether the plan is feasible and debtors' best efforts.

Because the plan does not meet the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, the Motion is denied.

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, Luis Enrique Garcia and Vanessa Michelle Garcia, 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 is denied.

Final Ruling: No appearance at the August 11, 2020 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. Dckt. 50.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

**The hearing on the Motion to Confirm is continued to
September 22, 2020 at 1:30 p.m.**

The debtor filed this Motion To Confirm the first amended plan on June 29, 2020. Dckt. 45. The plan provides for payments of \$317 for 19 months, \$0 for 3 months, and \$175 for 38 months. Dckt. 48. The modified plan extends the original plan term from 36 to 60 months, and provides a 1 percent dividend to unsecured claims totaling \$26,959.14. Id.

Creditor's Opposition

PRA Receivables Management, LLC, as agent for Portfolio Recovery Assets, LLC ("Creditor"), filed an Opposition on July 7, 2020. Dckt. 54. Creditor argues it has a claim secured by the debtor's residence that was entirely omitted from the plan.

Discussion

A review of the docket shows the debtor filed a motion (Dckt. 66) seeking to avoid Creditor's lien.

Because plan confirmation relies on the outcome of the avoidance motion, the court shall continue the hearing on debtor's Motion To Confirm.

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, Stephanie Barbara Roberts 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 to Confirm is continued to September 22, 2020 at 1:30 p.m.

5. [20-20817](#)-C-13 RONALD COLLA
[JHK](#)-1 Peter Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
7-2-20 [[31](#)]

SANTANDER CONSUMER USA INC.
VS.

Final Ruling: No appearance at the August 11, 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. 38.

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 for Relief from the Automatic Stay is continued to August 25, 2020 at 1:30 p.m.

Santander Consumer USA, Inc., filed this Motion seeking relief from the automatic stay as to debtor's 2018 Ford F-350.

Movant argues relief is warranted pursuant to 11 U.S.C. § 362(d)(1) because debtor has missed 4 prepetition and 1 postpetition payments, which allegation is support by declaration. Dckt. 34.

Movant also seeks relief from the co-debtor stay of 11 U.S.C. § 1301, and seeks waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure 4001.

Debtor's Reply

The debtor filed a Reply on July 27, 2020. Dckt. 54. The Reply represents that a plan has been filed and set for confirmation hearing that provides for Movant's claim as a Class 1.

Movant's Response

Movant filed a declaration in response to the debtor's Reply requesting that the hearing be continued to be heard alongside the Motion To Confirm set for August 25, 2020. Dckt. 58.

Discussion

In light of Movant's request, and good cause appearing, the court shall continue the hearing to August 25, 2020 at 1:30p.m.

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 Santander Consumer USA, Inc., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that hearing on the Motion for Relief from the Automatic Stay is continued to August 25, 2020 at 1:30 p.m.

No other or additional relief is granted.

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 35 days' notice was provided. Dckt. 49.

The Motion to Confirm is granted.

The debtor filed this Motion To Confirm the third modified plan on July 7, 2020. Dckt. 73. The plan provides \$22,590.00 paid through July 2020, and for payments of \$2,000 for 67 months. Dckt. 73. The modified plan extends the original plan term from 36 to 60 months, and provides a 1 percent dividend to unsecured claims totaling \$26,959.14. Id.

Creditor's Opposition

Guild Mortgage Company ("Creditor"), filed an Opposition on July 30, 2020. Dckt. 78. Creditor opposes confirmation on the basis that the plan includes post-petition arrearages of \$6,565.40 with a monthly dividend of \$100. Creditor argues no provision of the Bankruptcy Code allows a debtor to cure post-petition arrearages.

Discussion

While the Creditor argues no provision allows debtor to cure postpetition arrearages, the Creditor does not identify what provision prohibits that action.

11 U.S.C. § 1322(b)(5) states a plan may "provide for the curing of any default." "Any" default includes postpetition arrearages. 8 COLLIER ON BANKRUPTCY P 1322.09 (16th 2020); See, In re Steinacher, 283 B.R. 768, 773 (B.A.P. 9th Cir. 2002). 11 U.S.C. § 1329, which applies to modification of a plan after confirmation, provides that section 1322(b) applies. 11 U.S.C. § 1329(b)(1).

Here, the debtor is providing for the curing of a default, which is permitted by the Bankruptcy Code.

Creditor also argues paying only \$100 a month and curing the default in 65 months is unreasonable. However, there is no explanation why.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Marco Antonio Castillo, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's modified Chapter 13 Plan filed on July 7, 2020 (Dckt. 73) 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.

7. [19-26926](#)-C-13 ALEJANDRO/JOANN REYES
[RDG](#)-2 Thomas Amberg

OBJECTION TO CLAIM OF CEP
AMERICA CALIFORNIA, CLAIM
NUMBER 18
7-2-20 [[64](#)]

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 42 days' notice was provided. Dckt. 43.

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. 18, filed by CEP America California was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is January 14, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 25. The Proof of Claim subject to this Objection was filed January 24, 2020.

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 18 of CEP America California is sustained, and the claim is disallowed in its entirety.

8. [20-21329](#)-C-13 TONYA SMITH
[ABV](#)-2 Pro Se

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CIVIC VENTURES,
LLC
7-1-20 [[63](#)]

DEBTOR DISMISSED: 03/24/2020

Final Ruling: No appearance at the August 11, 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 41 days' notice was provided. Dckt. 65.

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 Motion for Approval of Compromise is denied as moot, the case having been dismissed.

On March 24, 2020, the case was dismissed. Dckt. 14. Therefore, the court shall deny this motion 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 Motion to Approve Compromise filed by Civic Ventures, LLC, as attorney-in-fact for DLJ Mortgage Capital, Inc. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion **is denied**.

9. [18-27730](#)-C-13 JENNY VANG
[RDG](#)-1 Mohammad Mokarram

OBJECTION TO CLAIM OF GOLDEN 1
CREDIT UNION, CLAIM NUMBER 25
6-30-20 [[22](#)]

Thru #10

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 35 days' notice was provided. Dckt. 24.

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. 25, filed by Golden 1 Credit Union was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is February 21, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 10. The Proof of Claim subject to this Objection was filed May 8, 2020.

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 25 of Golden 1 Credit Union is sustained, and the claim is disallowed in its entirety.

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 35 days' notice was provided. Dckt. 27.

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. 23, filed by Methodist Hospital was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is February 21, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 10. The Proof of Claim subject to this Objection was filed March 6, 2020.

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 23 of Methodist Hospital is sustained, and the claim is disallowed in its entirety.

11. [19-27334](#)-C-13 BRIAN/KRISTINE HURLEY
[RDG](#)-1 Werner Ogsaen

OBJECTION TO CLAIM OF UNIVERSAL
ACCEPTANCE CORPORATION, CLAIM
NUMBER 5
7-2-20 [[45](#)]

Thru #12

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 40 days' notice was provided. Dckt. 47.

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. 5, filed by Universal Acceptance Corporation was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is February 3, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 22. The Proof of Claim subject to this Objection was filed February 18, 2020.

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 5 of Universal Claim Acceptance is sustained, and the claim is disallowed in its entirety.

12. [19-27334](#)-C-13 BRIAN/KRISTINE HURLEY MOTION TO MODIFY PLAN
[WJO](#)-2 Werner Ogsaen 7-2-20 [[39](#)]

Final Ruling: No appearance at the August 11, 2020 hearing is required.

On July 31, 2020, the court issued an order continuing the hearing to September 22, 2020, based on a stipulated request of the parties. Dckt. 59. Therefore, the matter is removed from the August 11, 2020, calendar.

Final Ruling: No appearance at the August 11, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 61 days' notice was provided. Dckt. 31.

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

The Motion to Confirm is granted.

The debtors filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dckt. 29) filed on June 11, 2020.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtors, Thaddeus L. Friday and Angela Marie Friday 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 First Amended Chapter 13 Plan filed on June 11, 2020 (Dckt. 29) 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.

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. Dckt. 67.

The Motion to Confirm is XXXXXXX

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329. The first modified plan provides for \$28,700 paid through July 2020, and for payments of \$1,600 for 12 months, and \$2,100 for 51 months. Dckt. 65. The modified plan extends the original plan term to 84 months, and provides a 0 percent dividend to unsecured claims totaling 21,569.30. Id.

Trustee's Opposition

The trustee filed an Opposition on July 20, 2020. Dckt. 70. The trustee notes the Supplemental Schedule I (Dckt. 68) filed by the debtor includes a \$199.72 retirement loan repayment. The trustee opposes confirmation on the basis that it is not clear when the loan repayment ends, and when debtor could be paying more disposable income into the plan as required by the Bankruptcy Code.

The trustee also notes that Local Bankruptcy Rule 3015-1 applies if the retirement loan exceeds \$1,000.

Debtor's Reply

The debtor filed a Reply on August 3, 2020. Dckt. 73. Debtor represents the retirement loan will be completed January 2021, and requests the plan be modified in the order confirming the plan to provide for payments of \$1,600 for 6 months, \$1,800 for 6 months, and \$2,300 for 51 months.

Discussion

Two issues remain to be resolved. First, is the sufficiency of debtor's Reply. Debtor's counsel has represented that the retirement loans complete in January 2021. But, no evidence has been filed in support of that representation.

The second issue remaining is whether Local Bankruptcy Rule 3015-1 needs to be complied with.

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 debtor, Gregoire Tonoukouin, 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 is **xxxxxxx**

Final Ruling: No appearance at the August 11, 2020 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. Dckt. 56.

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

The Motion to Confirm is granted.

The debtors filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtors, Thaddeus L. Friday and Angela Marie Friday, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's modified Chapter 13 Plan filed on June 30, 2020 (Dckt. 55) 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.

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. Dckt. 135.

The Motion to Confirm is XXXXXX

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329. The second modified plan provides for \$68,302.10 paid through May 2020, and for payments of \$2,515 for 54 months. Dckt. 133. The modified plan extends the original plan term to 84 months, and provides a 0 percent dividend to unsecured claims totaling \$3,995.17. Id.

Trustee's Opposition

The trustee filed an Opposition on July 20, 2020. Dckt. 143. The trustee opposes confirmation, arguing he cannot determine whether the plan is feasible until a motion for compensation has been filed.

Discussion

Debtor's present counsel substituted in on March 27, 2020. The plan indicates debtor paid \$1,190 to prior counsel Ted Greene before filing the case, and provides for the remaining fee of \$2,810.00 to be paid to present counsel through the plan. Dckt. 133.

The first confirmed plan, confirmed on July 17, 2018, provided for the same flat fee. Dckt. 75.

The trustee has taken the position that a motion for approval of compensation is 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 filed by the debtors, Riccy Labitoria and Tessie Novales Labitoria 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 is ~~xxxxxxx~~

Final Ruling: No appearance at the August 11, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 42 days' notice was provided. Dckt. 45.

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 modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtor, Shea' Yvonne Easiley, 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 First Modified Chapter 13 Plan filed on June 30, 2020 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.

Final Ruling: No appearance at the August 11, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 42 days' notice was provided. Dckt. 50.

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 modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Pa Vang 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 Second Modified Chapter 13 Plan filed on June 30, 2020 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.

Final Ruling: No appearance at the August 11, 2020 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 more than 35 days' notice was provided. Dckt. 52.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Confirm is granted.

The debtor filed this Motion To Confirm the first modified plan on March 25, 2020. Dckt. 47.

The trustee filed an Opposition on April 28, 2020, arguing tat the plan is not feasible unless the debtor can sell his residence to fund a lump sum to complete the plan. Dckt. 57.

The prior hearing were held, and were continued to allow debtor to sell his residence.

Thereafter, on July 24, 2020, the court issued an order authorizing a sale and providing that creditors with timely filed, allowed claims will receive a 100% dividend.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtor, Steven Lynn Reno, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's modified Chapter 13 Plan filed on March 25, 2020 (Dckt. 51), 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.

20. [20-22178](#)-C-13 COREY FULK CONTINUED OBJECTION TO
[RDG](#)-1 Mikalah Liviakis CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-16-20 [[20](#)]

Final Ruling: No appearance at the August 11, 2020 hearing is required.

On August 6, 2020, the court issued an Order Confirming Plan. Dckt.
35. Because the Chapter 13 plan was already confirmed, the court will remove
this matter from the calendar.

21. [19-21282](#)-C-13 KATHLEEN RAPISURA-PARDO CONTINUED MOTION FOR CONTEMPT
[PLC](#)-8 Peter Cianchetta AND/OR MOTION FOR SANCTIONS FOR
VIOLATION OF THE AUTOMATIC STAY
4-24-20 [[100](#)]

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 39 days' notice was provided. Dckt. 105.

The Motion For Contempt is XXXXXX

The debtor filed this Motion seeking to impose sanctions on alleged creditor Elite Acceptance Corp. ("Elite") for violation of the automatic stay.

The allegations generally are that Elite contacted debtor regarding payment of a debt during the pendency of this case, and that after communications the creditor continued collection attempts on the premise that debtors' husband (who also filed a Chapter 7 case, no. 19-25500, but which case was dismissed August 30, 2019) and not debtor is liable for the debt.

Elite's Responses

Elite never filed an opposition to this Motion. Instead, a document requesting oral argument and for the court to take judicial notice were filed (Dckt. 113), supported by the Declaration of John Dumas Rochelle. Dckt. 114. Both documents were filed the day prior to the first hearing.

Elite's request for judicial notice is that it is not a creditor. The supporting declaration details communications with debtor's counsel, and notes the Elite's position that the debtor made misrepresentations by listing Elite as a creditor in this case.

After the first hearing, Elite filed a Statement noting that no opposition was filed to its request for judicial notice, and reiterating its request that it be noticed Elite is not a creditor in this case. Dckt. 120.

July 7 Hearing

At the July 7, 2020, hearing the court questioned whether Elite desired to supplement the record further, to which counsel for Elite represented that the presently filed pleadings were adequate. Dckt. 122, 123.

The court also noted that there was no evidence as to debtor's damages, including attorney fees. The court continued the hearing to allow debtor to file supplemental evidence by July 17, 2020.

Discussion

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

Here, Elite requests the court take notice that it is not a creditor as defined by 11 U.S.C. § 101(10)(A), and debtor Kathleen Ortiz Rapisura-Pardo not a "debtor" in the sense that she owes a debt to Elite.

But, both contentions are legal conclusions, not facts which can be subject to judicial notice. Whether the debtor and Elite here have ever entered into a debtor-creditor relationship is plainly not generally known and not readily determined from sources whose accuracy cannot reasonably be questioned. The court would have to be presented with evidence establishing facts that support those legal conclusions.

Therefore, Elite's request for judicial notice is denied.

Attached to the Declaration of John Dumas Rochelle as Exhibit A is a copy of the financing agreement, which was entered by the debtor's husband Mark Pardo. Dckt. 114 at p. 8. Presumably the creditor's argument is that because debtor's name does not appear on the contract, that she is not liable on the debt. But, this presumption ignores that "the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt." Cal. Fam. Code § 910. A "creditor" within the meaning of the Bankruptcy Code includes an entity that has a community claim. 11 U.S.C. § 101(10)(c).

Leaving aside the determination of whether debtor owes a debt to Elite, the court at the prior hearing noted that Elite filed Proof of Claim, No. 9, representing under penalty of perjury that it is a creditor in this case, and that it has a secured claim of \$5,804.33 that must be paid through the plan. The itemized statement filed in support of the Proof of Claim is a document with Elite's company header, and states "Debtor: Kathleen Ortiz Rapisura-Pardo."

The court also noted at the prior hearing that Elite is collecting on and has taken money in satisfaction of a claim, notwithstanding whether the claim is valid, that arose before commencement of the case.

Despite the court's position at the prior hearing, counsel for Elite represented that the record was sufficient in its current state.

Conclusion

11 U.S.C. § 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. No objection was made to Proof of Claim, No. 9.

Therefore, the court finds that Elite has a claim against the debtor and is a "creditor" within the meaning of 11 U.S.C. § 101(10).

The court also finds that Elite violated the automatic stay and co-debtor stay provisions of 11 U.S.C. §§ 362 and 1301 by (1) sending a statement in February 2020; (2) making a collection call March 3, 2020; (3) making a collection call March 23, 2020; (4) making a collection call April 23, 2020; and (5) receiving funds of \$1,760.35 in satisfaction of its claim while the case was pending.

Despite the continuance, no supplemental evidence has been filed to date. Therefore, the hearing will be continued again to allow evidence of damages to be filed. Given Elite's position in this contested matter, it is also questionable whether Elite has made more collection efforts since the filing of this Motion.

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 Contempt And Sanctions For Violation Of The Automatic Stay filed by the debtor, Kathleen Ortiz Rapisura-Pardo, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 35 days' notice was provided. Dckt. 49.

The Motion to Confirm is denied.

The debtor filed this Motion To Confirm the second modified plan on July 7, 2020. Dckt. 44. The plan provides for payments of \$317 for 19 months, \$0 for 3 months, and \$175 for 38 months. Dckt. 48. The modified plan extends the original plan term from 36 to 60 months, and provides a 1 percent dividend to unsecured claims totaling \$26,959.14. Id.

Trustee's Opposition

The trustee filed an Opposition on July 20, 2020. Dckt. 51. The trustee argues the plan is not feasible, both because the debtor is \$447.00 delinquent in plan payments and because the terms of the plan in months 23 through 35 require a \$315.34 payment, which is greater than the proposed \$175 payment.

Discussion

To be confirmed, a plan must be demonstrated to be feasible. 11 U.S.C. § 1325(a)(6). Here, the debtor's failure to maintain plan payments is evidence that the plan is not feasible. Declaration, Dckt. 52.

Additionally, the terms of the plan require a monthly payment of \$315.34 in months 23 through 35 (\$75.76 for attorney fees and \$208.05 to Class 2 claims), which is less than the proposed payment of \$175 in months 23 through 60. Dckt. 48.

Because the plan does not meet the requirements of 11 U.S.C. §§ 1322 and 1325(a), the Motion is denied.

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, Stephanie Barbara Roberts 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 is denied.