



UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

September 12, 2023 at 1:30 p.m.

Unless otherwise ordered, all matters before the Honorable Christopher M. Klein shall be simultaneously: (1) **In Person** at Sacramento Courtroom #35, (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

September 12, 2023 at 1:30 p.m.

-
1. [20-23808](#)-C-13 BETTY GONZALES MOTION TO SELL AND/OR MOTION TO
[PGM](#)-2 Peter Macalsuo WAIVE RULE 6004 (H)
8-11-23 [[40](#)]

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 32 days' notice was provided. Dkt. 44.

The Motion to Sell is granted.

Debtor, Betty Gonzales, filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 7940 Verna Mae Ave., Sacramento, CA ("Property").

The proposed purchaser of the Property is Franklin Otoniel Esparza-Haro and Jessica Abigail Esparza, and the proposed purchase price is \$435,999.00.

The Chapter 13 Trustee filed a response (dkt. 45) representing he did not oppose the motion, but requesting that the order includes certain language regarding the full payment of all liens, Trustee approval of escrow and title company and closing statement, and any disbursement may only be made in accordance with the approved closing statement.

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 because the debtor will use the proceeds from the sale to complete the plan.

Broker's Commission

Movant has estimated that a 5% percent broker's commission from the sale of the Property will equal approximately \$21,799.96. As part of the

September 12, 2023 at 1:30 p.m.

sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise.

Movant has 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 6004(h), and this part of the requested relief 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 debtor, Betty Gonzales ("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 Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 trustee for approval as to form, and if so approved submit the proposed order to the court.

IT IS FURTHER ORDERED that Movant is authorized to pay a real estate broker's commission in an amount not more than five percent of the actual purchase price upon consummation of the sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

2. [22-22932](#)-C-13 SHAHRAD ALAMI
[RDG-1](#) Mohammad Mokarram

OBJECTION TO CLAIM OF MECHANICS
BANK AUTO FINANCE, CLAIM NUMBER
2
8-11-23 [[19](#)]

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 32 days' notice was provided. Dkt. 21.

The Objection to Proof of Claim is sustained.

The Chapter 13 trustee filed this Objection arguing that Amended Proof of Claim, No. 2-2, filed by Mechanics Bank Auto Finance (Creditor) should be disallowed because creditor is not allowed a deficiency claim in the amount of \$4,835.93. Creditor filed the claim for a deficiency balance after the vehicle was repossessed and sold. The trustee contends that the a deficiency claim of a class 4 claim is provided for only if the plan allows for such a claim as a class 7 unsecured claim, which the debtor's plan here does not.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing its claim. *Wylie*, 349 B.R. at 210.

The Chapter 13 Trustee has overcome the presumptive burden and there is no opposition or evidence from the claimant establishing the claim. Therefore, the Amended Proof of Claim is disallowed.

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 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 Amended Proof of Claim Number 2-2 of Mechanics Bank Auto Finance is sustained.

3. [21-23637](#)-C-13 JASON GRAHAM
[SLH](#)-3 Seth Hanson

MOTION TO BORROW
8-15-23 [[40](#)]

Final Ruling: No appearance at the September 12, 2023 hearing is required.

The movant having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion was dismissed without a court order, and the matter is removed from the calendar.**

4. [23-22143](#)-C-13 MALIA/RAYMOND ENE
[RDG](#)-1 Gary Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-15-23 [[14](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 21.

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 341 meeting of creditors has not been held;
2. The debtors' scheduled monthly income does not reconcile with the 5 months of paystubs provided to the Trustee; and
3. Debtors have failed to provide a copy of their 2022 state income tax returns.

DISCUSSION

A review of the docket shows that the debtors appeared at the continued 341 meeting held on August 24, 2023.

The debtor has not provided the trustee with all required pay advices and other requested information to reconcile the debtors' monthly income. 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

That is reason to deny confirmation. 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.

5. [19-22046](#)-C-13 DEBORAH ARNOLD
[CJK](#)-1 George T. Burke

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
8-2-23 [[49](#)]

LAND HOME FINANCIAL
SERVICES, INC. VS.

Final Ruling: No appearance at the September 13, 2023 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 41 days' notice was provided. Dkt. 55.

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

The Motion for Relief from the Automatic Stay is granted.

Land Home Financial Services, Inc. ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's property commonly known as 846 Cedar Canyon Circle, Galt, CA (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent \$83,222.62 postpetition payments. Declaration, Dkt. 54. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$432,168.56, exceeds the value of the Property, which is \$375,000.00. *Id.*

DISCUSSION

The Order confirming the Chapter 13 Plan provides for Movant's claim as a Class 4. Plan, Order, Dkt. 31. The Confirmed Plan states the following with respect the automatic stay and Class 4 claims:

(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.

Id.

Based on the plain language of the Plan, the automatic stay was already modified to allow Movant to enforce its rights with respect to the collateral. Therefore, the relief requested by the Motion is moot.

The court recognizes that creditors may need an order specifying the continuing effect and modification of an automatic stay when state recording and filing law come into play, as well as for title insurance purposes.

The Ninth Circuit Court of Appeal has recognized the basic "discretion is the better part of valor" principle when it comes to the automatic stay. Seeking a separate order clearly specifying the scope of the relief granted in the Plan is not inappropriate.

The court grants the Motion, granting relief that under the terms of the confirmed Chapter 13 Plan, Dkt. 2, in this bankruptcy case, "all bankruptcy stays are modified to allow [Movant , and its agents and successors, as] the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

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 Land Home Financial Services, Inc. ("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 relief is granted pursuant to the Motion, the court confirming that "all bankruptcy stays are modified to allow [Movant , and its agents and successors, as] the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Confirmed Chapter 13 Plan, Dkt. 2; Order Confirming, Dkt. 31.

6. [19-22148](#)-C-13 VICTOR/VERONICA SAMPSON MOTION TO MODIFY PLAN
[MRL](#)-2 Mikala Liviakis 7-23-23 [[40](#)]

Final Ruling: No appearance at the September 13, 2023 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 49 days' notice was provided. Dkt. 47.

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

The Motion to Modify Plan is granted.

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

No opposition to the Motion has been filed.

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

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

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

The Motion to Modify Plan filed by the debtors, Victor and Veronica Sampson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the Modified Chapter 13 Plan (Dkt. 44) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

7. [19-22148](#)-C-13 VICTOR/VERONICA SAMPSON MOTION FOR COMPENSATION BY THE
[MRL](#)-3 Mikala Liviakis LAW OFFICE OF MIKALA RAYMOND
LIVIAKIS FOR LISA MCKEE,
DEBTORS ATTORNEY(S)
8-22-23 [[48](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice, or 21 days if greater than \$1,000. FED. R. BANKR. P. 2002(a)(6). The Proof of Service shows that 21 days' notice was provided. Dckt. 52.

The Motion for Allowance of Professional Fees is granted.

Counsel for the debtor filed this Motion seeking additional compensation, beyond the fixed fee approved in connection with plan confirmation pursuant to Local Bankruptcy Rule 2016-1(c), for substantial and unanticipated work performed.

Fees are requested for the period December 23, 2022, through August 19, 2023. Applicant requests fees in the amount of \$1,540.00 and costs in the amount of \$0.

DISCUSSION

The unique facts surrounding the case, including dismissing and vacating the dismissal of the case, and drafting and filing a motion to confirm 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 \$1,540.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

The Motion for Allowance of Fees and Expenses filed by Liviakis Law Firm ("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 Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, a professional employed by the Chapter 13 debtors, Victor and Veronica Sampson,

Fees in the amount of \$1,540.00

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.

8. [23-22051](#)-C-13 BRANDON WHITING
[EAT](#)-1 Randall Sutter

OBJECTION TO CONFIRMATION OF
PLAN BY CARRINGTON MORTGAGE
SERVICES, LLC
8-1-23 [[23](#)]

DEBTOR DISMISSED: 8/10/23

Final Ruling: No appearance at the September 13, 2023 hearing is required.

The case having previously been dismissed, the Objection is 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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 170.

The Motion to Sell is granted.

Debtor, Rajinder Singh, filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 8272 Summer Falls Circle, Sacramento, CA ("Property").

The proposed purchaser of the Property is Vijay Kumar and Pooja Bhatoa, and the proposed purchase price is \$419,000.00.

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 because the net proceeds will be used to pay the plan at 100% dividend to all creditors.

Broker's Commission

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately \$20,950.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise.

Movant has 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 6004(h), and this part of the requested relief 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 Rajinder Singh ("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 Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 trustee for approval as to form, and if so approved submit the proposed order to the court.

IT IS FURTHER ORDERED that Movant is authorized to pay a real estate broker's commission in an amount not more than five percent of the actual purchase price upon consummation of the sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

10. [23-21965](#)-C-13 AYANNA SPIKES
[SC-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-1-23 [[26](#)]

BRECKENRIDGE PROPERTY FUND
2016, LLC VS.

Final Ruling: No appearance at the September 13, 2023 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 42 days' notice was provided. Dkt. 32.

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

The Motion for Relief from the Automatic Stay is granted.

Breckenridge Property Fund 2016, LLC ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's property commonly known as 7036 Cantel Way, North Highlands, CA (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the movant purchased the property at a non-judicial foreclosure sale at 2:00 pm on June 15, 2023 before debtor filed her petition on June 15, 2023 at 3:00pm. Declaration, Dkt. 28. Movant also argues that the Deed Upon Sale was then recorded. *Id.*

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 filed the case after the sale of the property occurred on June 15, 2023.

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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 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 Breckenridge Property Fund 2016, 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, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 7036 Cantel Way, North Highlands, CA , California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

No other or additional relief is granted.

11. [23-22374](#)-C-13 WILLIE WATSON
[PLC](#)-1 Peter Cianchetta

CONTINUED MOTION TO EXTEND
AUTOMATIC STAY
7-26-23 [[18](#)]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that only 13 days' notice was provided. Dkt. 22.

The Motion to Extend the Automatic Stay is xxxxxxx

William James Watson, Sr. ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on June 5, 2023, after Debtor failed to file all necessary documents including a plan and a motion to confirm plan. Order, Bankr. E.D. Cal. No. 23-21656, Dkt. 8. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he failed to file a motion to confirm plan within the extension granted by the court.

The prior hearing was continued to allow the opposing party and debtor to file briefs on this matter.

Creditors, Jessica and Emma LaVerne Williams, oppose the motion because they contend that the debtor had filed two - not one - previous bankruptcy cases in the year prior to the filing of the instant case. Creditors represent that in addition to Case No. 23-21656 filed on May 22, 2023, debtor also filed Case No. 23-21640 on May 22, 2023. Therefore, creditor argues that under 11 U.S.C. § 362(c)(4)(D)(i)(I) this case is presumptively not filed in good faith.

Section 362(c)(4)(D) states a case is presumptively filed not in good faith as to all creditors if 2 or more previous cases under this title in which the individual was a debtor were pending within the 1 year period. 11 U.S.C. § 362(c)(4)(D)(i)(I).

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor,

the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

At the hearing **xxxxxxx**

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 William James Watson, Sr. 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**

12. [23-22076](#)-C-13 GRANT HANEY
[KMM](#)-1 Eric Schwab

OBJECTION TO CONFIRMATION OF
PLAN BY CITIGROUP MORTGAGE LOAN
TRUST INC.
7-26-23 [[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 48 days' notice was provided. Dkt. 24.

The Objection to Confirmation of Plan is sustained.

Creditor, Citigroup Mortgage Loan Trust Inc., Mortgage Pass-Through Certificates, Series 2007-AR8, U.S. Bank National Association, as Trustee as serviced by Specialized Loan Servicing LLC ("Creditor"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan fails to fully provide for the arrearage on creditor's claim; and
2. The plan is not feasible.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. 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 Citigroup Mortgage Loan Trust Inc., Mortgage Pass-Through Certificates, Series 2007-AR8, U.S. Bank National Association, as Trustee as serviced by Specialized Loan Servicing LLC, 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.

13. [22-21477](#)-C-13 VICTOR NAVARRO AND MOTION TO MODIFY PLAN
FF-2 KRISTINA ZAPATA NAVARRO 7-13-23 [[73](#)]
Gary Fraley

Final Ruling: No appearance at the September 13, 2023 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. Dkt. 79.

The Motion to Modify Plan is denied as moot.

On August 25, 2023, the debtor filed a new proposed plan. Filing a new plan is a de facto withdrawal of the pending plan. Therefore, the Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

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

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

The Motion to Modify Plan filed by the debtors, Victor and Kristina Navarro, 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 as moot, and the proposed Chapter 13 Plan is not confirmed.

14. [22-20080](#)-C-13 SABUETTE DEMATTIES
[JCW](#)-1 Mikalah Liviakis

MOTION TO APPROVE ADEQUATE
PROTECTION STIPULATION
8-14-23 [[39](#)]

Final Ruling: No appearance at the September 13, 2023 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 42.

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

The Motion for Approval of Adequate Protection Stipulation is granted.

Longbridge Financial, LLC, its assignees and/or successors, by and through its servicing agent Compu-Link Corporation d/b/a Celink (Movant), filed this Motion pursuant to Federal Rule of Bankruptcy Procedure 4001 seeking approval of a stipulation for adequate protection payments with debtor, Sabuette Dematties. The stipulation affects the real property commonly known as 5705 San Ardo Way, North Highlands, CA.

The stipulation provides for adequate protection payments commencing 08/15/2023 through 12/15/2023 in the amount of \$258.71, with a final payment of \$258.74 due 01/15/2024. The stipulation further provides for modifying the automatic stay entitling the Movant to lodge on Order Terminating the Automatic Stay in the event the debtor fails to timely perform, and fails to time cure any default, under the stipulation.

DISCUSSION

The movant has filed a motion to approve a stipulation for adequate protection and relief from the automatic stay of 11 U.S.C. § 362(a). Federal Rule of Bankruptcy Procedure 4001(d)(3) authorizes the court to approve or disapprove a stipulation for relief from the automatic stay. Under this rule, the court hereby approves the stipulation for relief from stay filed. The Motion is granted.

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

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

The Motion to Approve the Adequate Protection Stipulation filed by Longbridge Financial, LLC, its

assignees and/or successors, by and through its servicing agent Compu-Link Corporation d/b/a Celink ("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 Motion for Approval of the Adequate Protection Stipulation between Movant and debtor is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Adequate Protection Stipulation filed as Exhibit in support of the Motion (Dkt. 41).

Thru #16

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 56 days' notice was provided. Dkt. 70.

The Motion to Modify Plan is denied.

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 69) filed on May 4, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 72) on June 5, 2023, opposing confirmation because the plan does not provide for the claim of the Franchise Tax Board (Proof of Claim No. 8-1).

RESPONSE

The debtor filed a response (dkt. 75) stating that she is not required to file a state income tax return and the numerous attempts to contact FTB have gone unanswered.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the debtor is required to file a state income tax return, the debtor has not carried her burden to show the plan is adequately funded. 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, 1325(a), and 1329. The Motion is denied, and the plan is not confirmed.

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

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

The Motion to Modify Plan filed by the debtor, Valerie Ramirez, 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.

16. [22-22980](#)-C-13 VALERIE RAMIREZ
[PGM](#)-5 Peter Macaluso

CONTINUED OBJECTION TO CLAIM OF
FRANCHISE TAX BOARD, CLAIM
NUMBER 8
6-21-23 [[77](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(1) procedure which requires 48 days' notice. The Proof of Service shows that 55 days' notice was provided. Dkt. 81.

The Objection to Proof of Claim is overruled.

Debtor, Valerie Ann Ramirez, requests that the court disallow the claim of The State of California, Franchise Tax Board ("Creditor"), Proof of Claim No. 8 ("Claim"). The Claim is asserted to be priority in the amount of \$9,417.75 and \$2,354.44 in general unsecured debt. Debtor asserts that proof of claim improperly calculates a tax amount when the debtor's only source of income is non-taxable social security income.

Creditor filed an opposition on July 25, 2023. Dkt. 96. Creditor responds that it obtained information that debtor had income in 2020 of \$133,621.00 from Square, Inc. A notice of proposed assessment was issued to debtor on August 19, 2022 that the debtor failed to respond to or protest.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing its claim. *Wylie*, 349 B.R. at 210.

The debtor filed a notice acknowledging the substantial difference in income for the debtor. Counsel for the debtor is requesting a 30 day continuance to work with the creditor to resolve the issue.

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 Debtor, Valerie Ann Ramirez, 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 8 of The State of California, Franchise Tax Board is overruled.

17. [23-22084](#)-C-13 BRIAN/STEPHANIE PACE
[RDG](#)-1 Eric Schwab

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-17-23 [[13](#)]

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 26 days' notice was provided. Dkt. 16.

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. Debtors have failed to provide their 2022 Federal and state income tax returns to the Trustee; and
2. The plan provides for a claim related to a Jeep Liberty that was involved in an accident and has been rendered a total loss.

DISCUSSION

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

That is reason to deny confirmation. 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.

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. Dkt. 58.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 51) filed on August 8, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 59) on August 22, 2023, opposing confirmation on the following grounds:

1. The plan does not provide for the secured claim of creditor, The LCF Group;
2. The debtor has not filed the Attachment to Schedule I with debtor's business income and expenses;
3. The plan does not fully provided for all priority claims;
4. The plan is not feasible; and
5. Debtor has not made all monthly payments and the amended plan and declarations do not explain why no monthly payments have been made since the first payment in May.

Creditor, Floyd E. Carlton, Trustee of the Carlson Family Trust dated March 27, 2012 (Creditor), filed an opposition (dkt. 62) on August 29, 2023, opposing on the following grounds:

1. The plan does not provide fees and costs pursuant to § 506(b);
2. The plan is not feasible; and
3. The plan has not been filed in good faith.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim. Notwithstanding whether the plan provides for the secured claim as the Trustee argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has not filed all business documents including the Attachment to Schedule I. 11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

The debtor has not made plan payments for four months. Declaration, Dkt. 60. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 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 debtor, Wanmueng Wadkhian, 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.

19. [23-22197](#)-C-13 OMAR ASKAR
[RDG](#)-1 Carl Gustafson

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-17-23 [[15](#)]

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 26 days' notice was provided. Dkt. 18.

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 plan is not proposed in good faith because the debtor has lost his job and does not have regular income; and
2. The Trustee has requested that debtor provided income tax returns each year during the pendency of the case.

DISCUSSION

The debtor has not demonstrated the plan is feasible because he has not demonstrated that he can make all payments under the plan. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. 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.

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 17 days' notice was provided. Dkt. 35.

The Motion to Incur Debt is granted.

Debtor filed this Motion seeking authority to enter into a 24 month lease for a 2022 Ford Escape SUV that would be outfitted with accommodations for disabled persons.

The proposed financing will be paid over a 24 month term. Monthly payments are proposed to be \$361.12.

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

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

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

The Motion to Incur Debt filed by debtor, Theresa M. Russell, 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 debtor, Theresa M. Russell, is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dkt. 34.

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