

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

September 14, 2021 at 1:30 p.m.

1.	21-22511 -C-13	JOANNE ASPIRAS	OBJECTION TO CONFIRMATION OF
	APN -1	Peter Cianchetta	PLAN BY GLOBAL LENDING
			SERVICES, LLC
			8-18-21 [12]

Thru #2

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 27 days' notice was provided. Dkt. 15.

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

Creditor Global Lending Services, LLC ("Creditor"), opposes confirmation of the Chapter 13 plan on the basis that (1) the plan understates its claim, (2) the plan provides for an interest rate lower than the guidelines provided in Till vs. SCS Credit Corp, and (3) when accounting for the higher claim the plan is not feasible.

DISCUSSION

The Creditor's objection is well-taken. The plan provides for Creditor's claim in the amount of \$24,663.86 where the Creditor's Proof of Claim, which the plan terms provide controls, states the claim is \$27,742.58. The debtor has not shown the plan to be feasible given the higher than anticipated claim, which is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Additionally, the trustee has raised several other grounds for opposing confirmation in the trustee's Objection. Dkt. 16.

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 Global Lending Services, 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.

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 25 days' notice was provided. Dkt. 19.

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 debtor has not provided a copy of her 2020 State tax returns.
2. The plan relies on the court valuing the secured claim of Wheels Financial Group, which action has not been completed.
3. Paragraph 3.06 of Debtor's plan fails to state the monthly dividend payable for attorney fees.
4. The debtor's Schedule I includes a retirement loan repayment of \$246.05, but the plan is silent as to when repayment ends.
5. The trustee requests clarification as to why a payroll deduction of \$4,999.58 on Schedule I for a separate savings account is reasonable and necessary expense where the debtor has only shown \$1,045.00 of the savings allotment is being used for household expenses.

DISCUSSION

The trustee's grounds for opposing confirmation are well-taken. The debtor has not shown the plan is both feasible and the debtor's best efforts because Wheels Financial Group's claim has yet to be valued by the court; the plan does not state a monthly dividend for attorney fees; the plan does not state when the debtor's retirement loans will be repaid and the plan payment increased accordingly; and because the debtor has a significant monthly deduction for a savings account that has not been adequately explained.

The debtor has also not provided her 2020 State tax returns to the trustee.

Each of the aforementioned grounds is an individual basis to deny confirmation. 11 U.S.C. §§ 1325(a)(1), (a)(6), & (b)(1). Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Final Ruling: No appearance at the September 14, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 99.

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 Authorize Permanent Loan Modification is granted.

U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the WaMu Mortgage Pass Through Certificates, Series 2007-HY1 filed this Motion seeking authority for the debtor to enter a permanent loan modification. The debtor filed a Notice of Joinder requesting the same. Dkt. 102.

The joinder summarizes the loan modification terms as follows:

- a. Current Principal Balance: \$463,200.00
- b. Interest rate: 3.250%
- c. Commitment term: 480 months
- d. 480 payments starting 05/01/2021: \$2,101.90

DISCUSSION

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

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

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

The Motion to Authorize Permanent Loan Modification filed by U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the WaMu Mortgage Pass Through

Certificates, Series 2007-HY1 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 Stacie Renae Pradie is authorized to incur debt pursuant to the terms of the loan modification agreement (Dkt. 98).

Final Ruling: No appearance at the September 14, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 50 days' notice was provided. Dkt. 65.

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

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 64) filed on July 26, 2021.

No opposition to the Motion has been filed.

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

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

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

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

IT IS ORDERED that the Motion is granted, the debtor's Amended Chapter 13 Plan (Dkt. 64) 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 48 days' notice was provided. Dkt. 52.

The Motion to Confirm is XXXXX

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 51) filed on June 29, 2021.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 61) on July 19, 2021, opposing confirmation on the following grounds:

1. The plan treats the claim of Rocky Top Rentals, LLC, as a Class 2. However, that creditor's POC, no. 7, indicates the claim is unsecured.
2. The debtor's plan is a sixty-month plan and the average monthly dividend proposed for the Class 2 claim of Ford Motor Credit Company will take 60 months to pay said claim. As disbursements are not set to commence until month 4, debtor's plan is not feasible.

DEBTOR'S REPLY

The debtor filed a Reply agreeing with the trustee's arguments. The debtor represents that Rocky Top Rentals, LLC, is being contacted to see if the creditor will amend its claim. If that creditor does not do so, the debtor acknowledges that the dividend to unsecured will be increased.

The debtor further recommends the order confirming plan address the start date to payments on Ford Motor Credit Company's claim.

DEBTOR'S SUPPLEMENTAL REPLY

The debtor filed a Supplemental Reply on September 7, 2021. Dkt. 79. The Supplemental Reply reiterates the debtor's past argument that the Rocky Top Rentals, LLC, is inaccurate. But, no Objection to Claim has been filed.

DISCUSSION

At the hearing, **XXXXXXXXXXXXXXXXXX**

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

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

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

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

6. [17-20058](#)-C-13 JOSE/ADRIANA MACIAS
[SLE](#)-1 Steele Lanphier

MOTION TO WAIVE SECTION 1328
CERTIFICATE REQUIREMENT, AND
ALLOW ENTRY OF DISCHARGE AS TO
DEBTOR
7-28-21 [[36](#)]

Final Ruling: No appearance at the September 14, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 40.

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 is granted.

Debtor Adriana Macias, seeks an order approving the motion to waive the requirements of 11 U.S.C. § 1328 and allow entry of discharge for the deceased Debtor, Jose Antonio Macias.

The Certificate of Death for Jose Antonio Macias is filed as Exhibit A. Dkt. 39.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

Here, Adriana Macias has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. Additionally, the court finds that there is good cause to waive the certification requirement of 11 U.S.C. § 1328 as to the deceased debtor Jose Antonio Macias.

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 Waive Section 1328 Certificate Requirement and Allow Entry of Discharge filed by the Joint Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the certification requirement of 11 U.S.C. § 1328 as to the deceased debtor Jose Antonio Macias is waived.

Final Ruling: No appearance at the September 14, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 50 days' notice was provided. Dkt. 74.

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, Andrew Lynn Singleton and Myra Frances Singleton, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtors' Modified Chapter 13 Plan (Dkt. 69) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtors' counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

8. [21-22385](#)-C-13 TRAVIS GROSJEAN
[APN](#)-1 Peter Nisson

OBJECTION TO CONFIRMATION OF
PLAN BY CREDIT SUISSE FIRST
BOSTON MORTGAGE SECURITIES CORP.
8-3-21 [[13](#)]

Thru #9

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 42 days' notice was provided. Dkt. 16.

The Objection to Confirmation of Plan is sustained.

Creditor Suisse First Boston Mortgage Securities Corp., CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-1, U.S. Bank National Association, as Trustee ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that the plan understates Creditor's arrears by \$11,140.80.

The Creditor's argument is well-taken. The plan shows \$65,000.00 in arrears to be paid, and Creditor's Proof of Claim, which is controlling by the plan's own terms, states arrears are \$76,140.80.

With the higher arrears the plan is no longer feasible, which 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 Suisse First Boston Mortgage Securities Corp., CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-1, U.S. Bank National Association, as 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 sustained.

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 35 days' notice was provided. Dkt. 20.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor did not attend the August 5, 2021, Meeting of Creditors.
2. The debtor has not provided a copy of his recent tax returns.
3. The debtor has not provided the trustee with his pay advices.
4. The Rights and Responsibilities filed excludes services for judicial lien avoidances and relief from stay actions, which is not permitted by the Local Bankruptcy Rules. The Rights and Responsibilities filed also contradicts the Plan as to the amount of fees (\$5,000 vs. \$500).
5. The debtor's plan relies on a \$1,600.00 voluntary contribution from a third party - the trustee has requested a declaration from the third party to show the plan is feasible.
6. The debtor's plan provides for the amount of arrears due to Specialized Loan Servicing at \$65,000.00. That creditor filed a Proof of Claim alleging its arrears are \$76,140.80, and rendering the plan infeasible.
7. The debtor includes a \$1,500 housing expenses on Schedule J where that expense is already covered in the Class 1 monthly payment to Specialized Loan Servicing.
8. The debtor's petition did not list the debtor's prior Chapter 13 filing, case No. 19-22617.

DISCUSSION

The trustee's many grounds for opposing plan confirmation are well-taken. Much of the grounds show the plan is not feasible, including that the plan understated arrears on the debtor's mortgage, the debtor has not shown evidence supporting a significant voluntary contribution by a third party, and the Rights and Responsibilities contradicts the plan.

The debtor has also yet to provide all documents required by 11 U.S.C. § 521, including taxes and pay advices. Additionally, the 341 Meeting has yet to be concluded, the debtor omitted a prior case from his Petition, and the debtor incorrectly listed a housing expense on Schedule J where that expense is being paid as a Class 1 claim.

Each of the aforementioned grounds is an individual basis to deny confirmation. 11 U.S.C. §§ 1325(a)(1), (a)(6), & (b)(1).

Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

10. [21-22297](#)-C-13 ROBERT BROWNFIELD
Matthew DeCaminada

MOTION FOR RELIEF FROM AUTOMATIC
STAY; MOTION FOR ADEQUATE
PROTECTION
8-18-21 [[22](#)]

CHRISTINA KIMBLE VS.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 24.

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

Christina Kimble, a co-debtor in this case, filed this Motion seeking relief from the automatic stay to allow state court litigation seeking partition and possession of real property, Sacramento Superior Court Case No. 34-2019-00257188 (the "Litigation") to be allowed to continue.

Movant argues there is cause to allow the litigation to resolve based on 11 U.S.C. § 362(d)(1) due to inadequate protection, as well as 11 U.S.C. § 362(d)(4) because the filing of the petition being part of a scheme to delay, hinder, or defraud creditors that involved multiple filings.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on August 31, 2021. Dkt. 28. The debtor argues there is a \$402,000.00 equity cushion, of which the Movant is entitled to 50% of the proceeds.

The debtor also explains that the present case was filed in good faith. The debtor filed a prior Chapter 7 case and received a discharge, and the debtor filed the present case to seek a loan modification.

DISCUSSION

The scenario here, where a debtor obtains a Chapter 7 discharge and then pursues a Chapter 13, is commonly called a "Chapter 20," and is not indicative of a the filing of the petition being part of a scheme to delay, hinder, or defraud.

The Movant also argues there is inadequate protection because of an inadequate equity cushion, declining property value, and payments not being made. But, no evidence has been proffered as to what the equity cushion is, what the decline in property value is, and as to whether the debtor has been making the plan payments.

At the hearing, ~~xxxxxxxxxxxxxxxx~~

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 Christina Kimble ("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 **xxxxxxxxxx**