

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

**September 22, 2020 at 1:30 p.m.**

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

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1.	<a href="#"><u>19-27700</u></a> -C-13	KRISTA/SEAN BILLINGS	MOTION TO CONFIRM PLAN
	<a href="#"><u>PLC</u></a> -4	Peter Cianchetta	8-6-20 [ <a href="#"><u>69</u></a> ]

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 47 days' notice was provided. Dckt. 73.

<p><b>The Motion to Confirm is denied.</b></p>
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The debtors filed this Motion seeking to confirm the Third Amended Chapter 13 Plan (Dckt. 72) filed on August 6, 2020.

The Chapter 13 trustee filed an Opposition on August 31, 2020. Dckt. 80. The trustee argues that all the payments proposed by the plan, combined with the trustee's compensation, require a monthly payment of \$4,960.37. Declaration, Dckt. 81.

The Amended Plan proposes a payment of \$27,840.30 through July 21, 2020, and for payment of \$4,940.00 commencing August 25, 2020. Dckt. 72.

The trustee argues, and the court agrees, that the plan is not feasible because the terms mathematically require a greater payment than is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

**September 22, 2020 at 1:30 p.m.**

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The Motion to Confirm filed by the debtors, Krista Jean Billings and Sean Ryan Billings, 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.

2. [20-23000](#)-C-13 RITA FLORES  
[RAS](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY WILMINGTON TRUST,  
NATIONAL ASSOCIATION  
8-21-20 [[17](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 29 days' notice was provided. Dckt. 21.

**The Objection to Confirmation of Plan is overruled as moot.**

Wilmington Trust, National Association, as successor trustee ("Movant") opposes confirmation of the Chapter 13 plan on the basis that its claim is not properly provided for in the plan.

Movant argues that its claim matured on August 1, 2019, and must therefore be provided for in full through the plan.

**DISCUSSION**

First, the court notes that the Objection is not supported by any evidence. The Local Rules affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

The court also notes that the Notice of Chapter 13 Bankruptcy Case Meeting of Creditors and Deadlines Due to COVID-19 Outbreak, which was mailed out July 4, 2020, provided:

The debtor has filed a plan.

A copy of the plan is enclosed. Objections to the confirmation of this plan must be filed and served by 08/06/2020. An objection shall state with particularity the grounds therefor, be supported by evidence, and be accompanied by a notice of the confirmation hearing on 08/25/2020 at 01:30 PM in Courtroom 35, 6th Floor, at the Robert T Matsui United States Courthouse, 501 I Street, Sacramento, CA.

The objection and notice of hearing must be served on the debtor, the debtor's attorney, if any, and the bankruptcy trustee. If a timely objection is not filed and served, no confirmation hearing will be conducted unless the court orders otherwise. See Amended General Order 20-02 for more information regarding Objection to Confirmation deadline

Dckt. 13 (emphasis added).

The Objection here was filed after the deadline; no other objections were timely filed; and the Chapter 13 Plan was confirmed on August 24, 2020. Dckt. 22.

Because the plan was already confirmed, 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 the Chapter 13 Plan filed by Wilmington Trust, National Association, as successor trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled as moot.

3. [20-23400](#)-C-13 KATHLEEN STROUD  
[RDG](#)-1 Dale Orthner

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
8-31-20 [[14](#)]

**No Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dckt. 17.

**The Objection to Confirmation of Plan is XXXXXX**

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 Meeting of Creditors on August 27, 2020.
2. The debtor has not provided a copy of his most recent tax return.
3. Because the debtor has not attended the 341 Meeting, the trustee was unable to determine if all claimed exemptions were appropriate, and therefore whether the plan meets the liquidation test.
4. Paragraph 2.01 of Debtor's plan provides for a monthly plan payment of \$2,290.00. Trustee's calculations indicate that the debtor's plan payment will need to be at least \$2,959.00 to be feasible.

**DISCUSSION**

A review of the docket shows the debtor and debtor's counsel attended the continued Meeting of Creditors on September 10, 2020. Therefore, it is unclear what grounds for objection remain.

At the hearing, the parties reported XXXXXXXXXXXXXXXXXX

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

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

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

**IT IS ORDERED** that the Objection is XXXXXXXXXX

**No Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dckt. 17.

**The Objection to Confirmation of Plan is XXXXXX**

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

1. The debtor's non-exempt assets include \$134,000.00 in her residence, \$2,729.25 in cash and bank accounts, \$4,175.00 in a 2007 Chevy, and \$3,000.00 in a 2007 Fleetwood. Debtor's plan must pay 100% (\$136,906.25 divided by \$39,142.00) to general unsecured creditors, plus interest at the Federal Judgment Rate of .16% since the value of the non-exempt assets exceeds the amount of the general unsecured claims. Debtor's plan pays 0%.

2. Debtor's plan provides for the Internal Revenue Service and Franchise Tax Board in Class 2 of the plan. However, the Debtor does not indicate an amount owed or a monthly dividend for either of these obligations

**DEBTOR'S OPPOSITION**

Debtor filed a Response on September 2, 2020. Dckt. 18. Debtor's counsel reports that debtor agrees to pay unsecured creditor's 100%; that the plan term should be extended to 60 months;

**DISCUSSION**

The debtor seeks to address the trustee's grounds for objection in the order confirming plan. However, the trustee has not weighed in on whether the plan will be feasible given the extended plan term and increased dividend.

At the hearing, the parties reported XXXXXXXXXXXXXXXX

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

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

The Objection to 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 **xxxxxxxxxx**

Thru #7

**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 43 days' notice was provided. Dckt. 50.

**The Motion to Confirm is XXXXXX**

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.

August Hearing

At the August 11, 2020 hearing date, the court continued the hearing to allow resolution of debtor's Motion To Avoid Lien. Dckt. 73.

**Discussion**

A review of the docket shows that the Motion To Avoid Lien was denied without prejudice.

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, 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  
xxxxxxxxxx



**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 No. 11 is overruled.**

The debtor filed this Objection arguing that Proof of Claim, No. 11, filed by Caliber Home Loans misstated the account balance to be \$162,766.20, where the amount owing at the time of filing was \$230,422.18. The debtor argues the discrepancy stems from a \$67,655.98 balloon payment due at the maturity date, which the creditor has excluded from the Proof of Claim.

On September 8, 2020, the creditor filed a Response. Dckt. 75. The creditor argues that the \$67,655.98 resulted from a partial claim agreement which bifurcated and subordinated the claim to the Department of Housing and Urban Development. The creditor argues the \$67,655.98 was not a balloon payment, and that the Proof of Claim is accurate.

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.

**DISCUSSION**

Exhibit 3 filed by the creditor is the Partial Claim Offer And Agreement. Dckt. 77. That agreement states ". . . the Partial Claim will be submitted to [the Department of Housing and Urban Development]." Id. Exhibit 4 is the Promissory Note which reflects the debtor as a borrower and the Secretary of Housing and Urban Development as the lender, with the loan in the principal amount of \$67,655.98. Id.

Because the \$67,655.98 is in a separate note held by a separate creditor, the Proof of Claim appears to reflect the correct amounts. The Objection to the Proof of Claim is overruled.

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

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

The Objection to 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 is overruled.

**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 49 days' notice was provided. Dckt. 70.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, and finds there are no disputed material factual issues. *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 Avoid Judicial Lien is denied without prejudice.**

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates ("Creditor") against property of the debtor commonly known as 6625 Cranberry Ct., Citrus heights, California ("Property").

A judgment was entered against the debtor in favor of Creditor in the amount of \$4,134.73. Proof of Claim, No. 12. An abstract of judgment was recorded with Sacramento County on March 18, 2019, that encumbers the Property. *Id.*

**Unavoidable and Superior Liens**

Debtor lists on Schedule D a first deed of trust encumbering the Property and securing a \$231,898.00 claim. Proof of Claim, No. 11, shows that the mortgage was bifurcated into two claims. \$162,766.20 was held by Caliber Home Loans, Inc., the original lender, and roughly \$67,655.98 is held by the Department of Housing and Urban Development, or an unknown successor.

The court finds that the evidence in the record shows the consensual liens total roughly \$230,422.18 (\$162,766.20 plus \$67,655.98).

**Value of the Property**

The value of the Property is stated to be \$276,000.00. Schedule A/B, Dckt. 22. But, the additional information explains:

FMV = \$350,000. House needs significant work. Roof needs to be replaced, A/C needs to be replaced, Pool requires significant work and is serious disrepair, siding on the outside of the entire house is rotted and requires replacing.

Debtor deducts \$50,000 for repair and then 8% cost of sale  
(8% = \$24,000)

House is Debtor's sole and separate property (not  
community).

Id.

The analysis provided by the debtor is contrary to clear 9th Circuit authority which provides that 11 U.S.C. § 522 analysis cannot rely on hypothetical future events. In re Darosa, 318 B.R. 871, 879 (B.A.P. 9th Cir. 2004).

The debtor has not here given an opinion of value, taking into account what impact necessary repairs might have on the fair market value. Instead, the debtor has posited (without explanation for such basis) what the repairs would cost, and has subtracted that amount from the value.

Additionally, there is no authority supporting the proposition that the liquidation value (which accounts for cost of sale) of the property should be used, and not the fair market value.

### **Analysis**

On the evidence presented, there appears to be significant equity remaining in debtor's Property, meaning the creditor's judicial lien does not impair debtor's claimed \$44,102.00 exemption. Schedule C, Dckt. 27.

The Motion will be denied with prejudice in consideration that debtor may wish to seek a more accurate appraisal, which determines the fair market value of the home considering its condition.

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtor Bertha Pizano Pearson 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 without prejudice.

**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. 29.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dckt. 25) filed on August 10, 2020.

The trustee filed an Opposition to confirmation on August 27, 2020. Dckt. 30. The trustee argues the plan mathematically requires a payment of \$619.97 when accounting for trustee's compensation, which is greater than the plan payment of \$238.95 in months 1 through 30, \$572,40 in months 31 through 59.

The debtor reports having only \$238.95 in disposable income on Schedules I and J. Dckt. 7. It is unclear how the debtor expects to maintain the Class 2 dividends, which alone total \$516.30 a month. Dckt. 25.

The Plan on its face is not feasible and cannot be confirmed. 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, Lucy Ann Patten, 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.

9. [20-23824](#)-C-13 RANDY/SAMANTHA SHUKER  
[GB-1](#) Justin Kuney

OBJECTION TO CONFIRMATION OF  
PLAN BY CONSUMER PORTFOLIO  
SERVICES, INC.  
8-25-20 [[19](#)]

**Final Ruling:** No appearance at the September 22, 2020 hearing is required.  
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The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dckt. 22.

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 Objection to Confirmation of Plan is  
continued to October 6, 2020 at 1:30 p.m.**

Creditor Consumer Portfolio Services, Inc. ("Creditor") opposes confirmation of the Chapter 13 plan because it disputes the proposed valuation of its secured claim.

The debtor filed a Motion To Value (Dckt. 27), which is set for hearing October 6, 2020. Because this Objection relies on the outcome of that Motion, the court shall continue this hearing to that date.

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 Consumer Portfolio Services, 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 hearing on the Objection to Confirmation of Plan is continued to October 6, 2020 at 1:30 p.m.

**Final Ruling:** No appearance at the September 22, 2020 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 40 days' notice was provided. Dckt. 44.

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.

The trustee initially filed opposition, but withdrew opposition on August 27, 2020. Dckt. 63.

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, Brian Lindsay Hurley and Kristine Marie Hurley, 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 2, 2020 (Dckt. 42) 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.

11. [20-21336](#)-C-13 CHI MA  
[MA-1](#) Yasha Rahimzadeh

MOTION TO CONFIRM PLAN  
8-10-20 [[79](#)]

Thru #12

**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 43 days' notice was provided. Dckt. 83.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dckt. 76) filed on July 20, 2020.

On August 31, 2020, the trustee filed an Opposition. Dckt. 87. The trustee argues the plan is not feasible because the plan fails to state a dividend for attorney fees, and because the debtor is \$17,007.08 delinquent. Declaration, Dckt. 88.

The significant payment delinquency is evidence that the plan is not feasible, and cannot be confirmed. 11 U.S.C. § 1325(a)(6). 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, Chi Khai Ma, 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.

**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 14 days' notice was provided. Dckt. 67.

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor has not filed an amended plan since the time the court denied confirmation of the Chapter 13 plan on May 19, 2020.

At the prior hearing, the court granted a short continuance to allow debtor and debtor's counsel to file an amended plan to address this Motion.

While the debtor did file an Amended Plan and Motion To Confirm (Dckts. 76, 79), the trustee noted at the continued hearing that the debtor was still substantially delinquent in payments.

In an opposition to confirmation of the Amended Plan, the trustee reports the debtor is \$17,007.08 delinquent. Declaration, Dckt. 88.

The substantial delinquency, even after debtor filed a new plan, is evidence of unreasonable delay that is prejudicial to creditors, and cause to dismiss the case. 11 U.S.C. § 1307(c).

The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, Russell Greer ("Trustee"), pursuant to 11 U.S.C. § 1307(c)(1), 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 case is dismissed.



**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dckt. 38.

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

1. The plan's additional provisions include a plan term of 58 months, and then on another page a plan term of 60 months. The trustee argues the plan is not feasible given the conflicting terms.
2. Debtors' plan classifies Lendmark Financial Services for a 2005 Toyota Tundra as a Class 4 claim. However, Debtors admitted that the loan will be paid off in 5 months.
3. Debtors' plan classifies Toyota Financial Services for a 2010 Lexus as a Class 4 claim. Debtors admitted that the loan will be paid off in 12 months.
4. Debtors' Disclosure of Compensation of Attorney for Debtor at Line 6 states that the agreed upon fee of \$4,000.00 does not include judicial lien avoidances. This is contradictory to the Rights and Responsibilities signed by Debtors and their attorney.

**DISCUSSION**

The trustee argues the plan has conflicting terms, as well as missclassified claims. As to the latter, the plan at section 3.02 provides that the Proof of Claim, and not the plan, decides the classification. Plan, Dckt. 4. But, the conflicting plan term remains, and if the trustee cannot administer the plan due to conflicting terms the plan is not feasible.

The trustee also notes that the Disclosure of Attorney Compensation (Dckt. 1) states that representation included with the flat fee excludes "judicial lien avoidances," which conflicts with the Rights and Responsibilities. Dckt. 5. The Local Rules require any attorney seeking employment on a flat fee basis to file Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Local. Banker. R. 2016-1(c)(2). That form inherently requires any attorney seeking employment on a flat fee basis to agree to prosecute lien avoidance motions where necessary. Therefore, it appears counsel may not be entitled to a flat fee in this case.

The court also notes that debtors report disposable monthly income of only \$3,323.18. Dckt. 1. This amount is less than the proposed payment of \$3,525.00 for 11 months, which is the lowest payment before stepped-increases commence. Dckt. 4. The plan also appears to not be feasible on this basis, which is an additional ground for denying confirmation. 11 U.S.C. § 1325(a)(6).

Therefore, the Objection is sustained.

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

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

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

**IT IS ORDERED** that the Objection is sustained.

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dckt. 16.

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

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that the debtor's \$400 child support expense will end in 2020, but the plan payment does not increase accordingly.

**DEBTOR'S RESPONSE**

Debtor filed a Response on September 2, 2020, agreeing to stepped up payments of \$4,800.00 per month for 30 months, and \$5,700.00 for 30 months. Dckt. 17.

**DISCUSSION**

The debtor has agreed to the increased plan payment to reflect the increase in income debtor will have when child support payments cease.

No other grounds for objection remaining, it appears the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the plan is confirmed.

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

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

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

**IT IS ORDERED** that the Objection is overruled, and the debtor's Chapter 13 Plan filed on July 20, 2020 (Dckt. 2), is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, which includes language specifying the increased payments, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Thru #16

**Tentative Ruling:**

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

**The Motion to Confirm the Amended Plan is granted.**

The debtor filed this Motion To Confirm the first amended plan on June 11, 2020. Dckt. 31.

Since the prior hearing, the debtor has obtained an offer for the sale of his residence that would allow him to pay off all claims in the case. A review of the docket shows the motion to sell was granted.

The trustee has indicated he does not oppose confirmation so long as the order confirming the plan includes language specifying the lump sum to be made to pay all claims.

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 the Amended Chapter 13 Plan filed by the debtor, David Edward Sims ("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, the debtor's Amended Chapter 13 Plan filed on June 11, 2020 (Dckt. 209) 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, which includes language specifying the lump sum necessary to pay all claims, 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 28 days' notice. The Proof of Service shows that 32 days' notice was provided. Dckt. 244.

**The Motion to Sell is granted.**

The debtor David Edward Sims filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell. Here, Movant proposes to sell property commonly known as 3615 6th Avenue, Sacramento, California ("Property").

The proposed purchaser of the Property is Nicholas Berry, and the purchase offer is \$530,000.00.

Creditors Bosco Credit, LLC, and U.S. Bank, N.A. both filed responses indicating non-opposition so long as their secured claims are paid in full. Dckts. 246, 253.

The trustee and debtor both agree the following language should be added to the order granting the motion:

- a. The sale is approved provided all liens are paid in a manner consistent with the plan, notwithstanding relief from stay having been entered.
- b. Trustee must approve of the Title Company and Escrow Company to be used in connection with the sale. His approval shall not be unreasonably withheld.
- c. The sale is approved provided that the Trustee approves the estimated closing statement to be prepared in connection with the sale, and when approved, disbursement may only be made in accordance with the approved closing statement.
- d. Movant shall use the net sale proceeds to pay a 100% dividend to general unsecured creditors.

**DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

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

The Motion to Sell Property filed by the debtor, David Edward Sims ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to Nicholas Berry or nominee, the Property commonly known as 3615 6th Avenue, Sacramento, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$530,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 243, and as further provided in this Order.
- B. Trustee must approve of the Title Company and Escrow Company to be used in connection with the sale. His approval shall not be unreasonably withheld.
- C. The sale is approved provided that the Trustee approves the estimated closing statement to be prepared in connection with the sale, and when approved, disbursement may only be made in accordance with the approved closing statement.
- D. The sale is approved provided all liens are paid in a manner consistent with the plan, notwithstanding relief from stay having been entered.
- E. Movant shall use the net sale proceeds to pay a 100% dividend to general unsecured creditors.
- F. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.

**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 15 days' notice was provided. Dckt. 14.

**The Motion to Extend the Automatic Stay is granted.**

Juan Martinez Lopez and Rosalina Barajas Martinez-Maciel ("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 Debtors' second bankruptcy petition pending in the past year. Debtors' prior bankruptcy case was dismissed on September 3, 2020, after Debtors fell delinquent in plan payments. Order, Bankr. E.D. Cal. No. 17-20354, Dckt. 61. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtors thirty days after filing of the petition.

Here, Debtors state that the instant case was filed in good faith and explains that the previous case was dismissed because the debtors were unaware their mortgage payment increased.

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.

Debtors have sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this 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 to Extend the Automatic Stay filed by Juan Martinez Lopez and Rosalina Barajas Martinez-Maciel 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 automatic stay is extended pursuant to 11 U.S.C. § 362(c) (3) (B) for all purposes and parties, unless terminated by operation of law or further order of this 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 42 days' notice was provided. Dckt. 81.

**The Motion to Confirm is xxxxxx.**

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dckt. 79) filed on August 11, 2020.

The trustee filed an Opposition on August 31, 2020. The trustee argues that the plan may not be proposed in good faith because the debtor's the plan payment is not increased to reflect two retirement loans repayments ending in months 48 and 52.

The trustee notes the Modified Plan provides for a 10.76 percent dividend to unsecured creditors, which is less than some of those creditors have received to date. Trustee requests the following language be added to any order confirming plan:

"Unsecured creditors to receive a dividend of 10.76% or the greater amount already paid by the Trustee."

At the hearing, the parties reported whether the plan payment issue has been resolved 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, Ian Vidal Fontanilla, 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 August 11, 2020 (Dckt. 79) 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 September 22, 2020 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 42 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 debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dckt. 30) filed on August 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 debtor, Savina Tene Hall, 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 Chapter 13 Plan filed on August 11, 2020 (Dckt. 30) 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.

20. [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 XXXXX**

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 the 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 the debtor's husband (who also filed a Chapter 7 case, no. 19-25500, but which case was dismissed August 30, 2019) and not the 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 was 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.

## **Elite's Supplemental Response**

Elite filed a Supplemental Response on August 17, 2020. Dckt. 131. Counsel for elite argues it thought its request for judicial notice was being granted and this Motion denied at the July 7 hearing, and was surprised that the court requested debtor's counsel to supplement the record. Elite explains further it did not attend the August 11, 2020, hearing because the debtor's counsel did not supplement the record, and counsel thought this matter was dropped by the debtor.

Counsel for Elite requests the court reexamine this matter and issue an Order To Show Cause regarding debtor's fraudulent listing of Elite as a creditor.

## **Debtor's Supplemental Reply**

Debtor filed a Supplemental Reply and evidence on August 19, 2020. Dckts. 133-136. Debtor argues Elite's debt is a community debt; that Elite collected community funds to satisfy the debt; Elite filed a claim in this case claiming it was a creditor; Elite does not contest it made collection attempts; Elite never opposed confirmation of the Chapter 13 plan and has been collecting payments.

Debtor argues emotional damages of \$2,500 and attorney fees of \$5,996.00 were caused by Elite. Exhibit 5 (Dckt. 134) is an itemized billing statement from debtor's counsel. Debtor's counsel also filed his own declaration.

Still missing, however, is evidence (testimony from the debtor) as to what debtor's damages were. What has been provided by debtor's counsel is only his legal conclusion that the debtor suffered \$2,500 in emotional damages.

## **August Hearings**

Elite did not attend the August 11, 2020, hearing. Dckt. 129. The court issued an Order To Show Cause regarding why default should not be entered. Dckt. 128.

At the August 25, 2020, hearing, both parties appeared. On the subject of harm to the debtor, counsel for debtor noted that the original declaration file in support of the Motion (Dckt. 102) provided testimony as to loss of sleep and anxiety.

Counsel for Elite posited why no party had conducted a 2004 exam as to whether the credit report of the debtor's husband revealed that he was married to the debtor at the time the debt was incurred. The court continued the hearing to allow the creditor to supplement the record with evidence of the credit report, and to allow further reply of the debtor.

## **Supplemental Responses**

On September 8, 2020, Elite filed a Notice of Withdrawal of its opposition. Elite admits it violated the automatic stay, and asks for leniency, representing the violation was unintentional and procedures have been changed to ensure the mistake does not reoccur.

Debtor filed a Supplement to the Order To Show Cause on September 11, 2020. Dckt. 143. Debtor's counsel argues that Elite's counsel violated Federal Rule of Bankruptcy Procedure 9011 because there was no basis in fact or law for Elite's positions. Debtor's counsel notes in this regard that (1) Elite accused the debtor of fraud due to debtor listing Elite as a creditor; (2) Elite's counsel requested the court judicially notice facts that were disputed; and (3) Elite was informed by debtor's counsel and debtor that it was violating the stay.

Debtor seeks \$2,500 in emotional damages; \$2,500 in punitive damages; and \$7,548.50 in attorney fees.

### **Discussion**

The creditor Elite no longer opposes the Motion, and concedes that it violated the automatic stay. The sole issue remaining is the question of damages and an appropriate sanction, if any.

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 40 days' notice was provided. Dckt. 48.

**The Motion to Confirm is granted.**

The debtor filed this Motion seeking to confirm the Second Modified Chapter 13 Plan (Dckt. 45) filed on August 13, 2020.

The trustee filed an Opposition on August 31, 2020. Dckt. 49. The trustee argues the plan does not address the forbearance on mortgage payments, which extends from April through June 2020, and when those payments will later be made.

The debtor filed a Response on September 8, 2020. Dckt. 52. Debtor's counsel argues that it is unclear how the payments will be treated (whether treated as an arrearage, or reincorporated into the principal, or otherwise), and therefore the best solution is to confirm the plan recognizing it may later need to be modified.

The court agrees with the debtor's approach. The creditor, Wells Fargo, Bank, N.A., has chosen not to oppose the way the plan presently treats its claim. If the parties agree that the suspended payments should be treated as a postpetition arrearage, the plan can be further modified. FN.1.

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FN.1. The Notice Of Temporary Forebearance states "This Temporary Forbearance . . . suspends the date that such indebtedness must be paid." If the payment due date is suspended, then the amount is not yet owing.  
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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, Robert J. Porter, 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 August 13, 2020 (Dckt. 45) 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.