

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

September 27, 2022 at 1:30 p.m.

1. [21-20009](#)-C-13 CYNTHIA ARIETA MOTION TO MODIFY PLAN
[PGM-3](#) Peter Macaluso 8-8-22 [\[88\]](#)

Thru #2

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 50 days' notice was provided. Dkt. 92.

The Motion to Modify Plan is granted.
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The debtor successor in interest filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 90) filed on August 2, 2022.

Creditor, U.S. Bank Trust National Association, as Trustee of the Chalet Series IV Trust filed an Opposition (Dkt. 110) on September 13, 2022, opposing confirmation on the following grounds:

1. Post petition arrears are \$15,704.72 for the time period of December 2021 through August 2022 rather than the plan amount of \$10,397.03 for the time period of October 2021 through May 2022; and

2. Requests a note in the order that post-petition arrearages will be paid in full based upon a quote provided by creditor at the time of payment of post-petition arrears.

Debtor filed a reply to the Creditor's opposition representing that the arrears should be changed to \$15,704.72 barring any disagreement from the Chapter 13 Trustee.

DISCUSSION

Given the debtor's reply conceding that the correct amount of arrears is \$15,704.72, there appears to be no further basis for objection to confirmation.

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 debtor successor in interest, Cynthia Arieta, 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. 90) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

2. [21-20009](#)-C-13 CYNTHIA ARIETA
[PGM](#)-3 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK TRUST
NATIONAL ASSOCIATION
9-13-22 [[110](#)]

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 14 days' notice was provided. Dkt. 112.

The Objection to Confirmation of Plan is overruled as moot.

Creditor, U.S. Bank Trust National Association, as Trustee of the Chalet Series IV Trust ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. Post petition arrears are \$15,704.72 for the time period of December 2021 through August 2022 rather than the plan amount of \$10,397.03 for the time period of October 2021 through May 2022; and

2. Requests a note in the order that post-petition arrearages will be paid in full based upon a quote provided by creditor at the time of payment of post-petition arrears.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 19, 2022. Dkt. 114. Debtor agrees that the arrears should be changed to \$15,704.72 barring any disagreement from the Chapter 13 Trustee.

DISCUSSION

The creditor's motion is properly considered in the debtor's motion to modify plan. The court has fully considered Creditor's opposition in the motion to modify and therefore the objection to confirmation is overruled as moot.

No other grounds for objection remaining, it appears the plan complies with 11 U.S.C. §§ 1322 and 1325(a). 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 Bank Trust National Association, as Trustee of the Chalet Series IV Trust, 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. [20-22719](#)-C-13 LUCY PATTEN
[RAS](#)-1 Allan Frumkin

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
6-9-22 [[94](#)]

PHH MORTGAGE CORPORATION VS.

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 46 days' notice was provided. Dkt. 101.

The Motion for Relief from the Automatic Stay is granted.

Creditor, PHH Mortgage Corporation as attorney in fact for Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I Trust ("Movant"), filed this Motion seeking relief from the automatic stay as to the debtor's property commonly known as 6308 Creekcrest Circle, Citrus Heights, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent in failing to maintain the property taxes. Declaration, Dkt. 96. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$358,190.34, exceeds the value of the Property, which is \$326,000. *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 is delinquent in failing to maintain property taxes. The court also finds cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$358,190.34, exceeds the value of the Property, which is \$326,000.

Language vacating stay

Based on the foregoing, the Motion is granted. The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

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 4001(a)(3), and this part of the requested relief is 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 PHH Mortgage Corporation as attorney in fact for Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I Trust ("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 6308 Creekcrest Circle, Citrus Heights, California, 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 waived for cause.

No other or additional relief is granted.

Final Ruling: No appearance at the September 27, 2022 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 41 days' notice was provided. Dkt. 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 (Dkt. 26) filed on August 16, 2022.

The Chapter 13 trustee filed a non-opposition on September 15, stating he had received additional information that addressed their initial concerns and have no further opposition to confirmation. Dkt. 35.

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, Aspen Nicole Marshall, 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 (Dkt. 26) 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.

Thru #6

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 54 days' notice was provided. Dkt. 34.

The Motion to Confirm Plan is denied.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 29) filed on May 25, 2022.

The Chapter 13 Trustee, Russell Greer ("Trustee") filed an Opposition (Dkt. 39) on July 14, 2022, opposing confirmation on the following grounds:

1. The plan payments are delinquent;
2. The plan does not provide for claim No. 5 filed by Angel Cleveland;
3. The plan provides for payments in connection with Domestic support Obligations, where the Trustee is not aware of a stipulation with the Counties on the treatment of those obligations; and,
4. The debtor and his attorney have failed to file a Statement of Rights and Responsibilities related to the payment of attorney fees.

DISCUSSION

The debtor is \$1,230.00 delinquent in plan payments. Declaration, Dkt. 40. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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 supplied sufficient information relating to the payment of the domestic support obligations to assist the Chapter 13 Trustee in determining the correct amount to be paid to the counties.

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, Henry Burl Reed, 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.

6. [22-20928](#)-C-13 HENRY REED
[DPC](#)-81922 Colby LaVelle

OBJECTION TO CLAIM OF ANGEL
CLEVELAND, CLAIM NUMBER 5
9-2-22 [[49](#)]

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. 52.

The Objection to Proof of Claim is sustained.

Debtor, Henry Reed, requests that the court disallow the claim of Angel Cleveland ("Creditor"), Proof of Claim No. 5 ("Claim"). The Claim is asserted to be secured in the amount of \$4,800. Debtor asserts that creditor does not hold a secured interest in debtor's vehicle because the vehicle is titled in the vehicle finance company and the debtor's name only. Debtor further contends that the creditor filed no proof of a secured interest with the proof of claim.

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 declares that the claim is not secured and asserts that the creditor did not provide any documentation showing a secured interest. Debtor further declares that the vehicle's title is in the his name and the name of the vehicle finance company only. The proof of claim does not provide a Basis for Perfection as required in the proof of claim form. Nor has the creditor opposed the objection. Therefore, the court finds the debtor has offered evidence of equally probative value as that offered in the proof of claim.

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, Henry Reed, having been presented to the court, and upon review of the pleadings, evidence, arguments of

counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 5 of Angel Cleveland is sustained.

Final Ruling: No appearance at the September 27, 2022 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 48 days' notice was provided. Dkt. 148.

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, Brandon and Tracy McBroom, 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. 147) 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.

8. [22-21394](#)-C-13 KATHY JONES CONTINUED OBJECTION TO
[RDG](#)-1 Peter Macaluso CONFIRMATION OF PLAN BY RUSSELL
D. GREER
7-22-22 [[20](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 23.

The Objection to Confirmation of Plan is xxxxxxxxxx

The Chapter 13 Trustee, Russell Greer ("Trustee"), filed an objection to confirmation of the Chapter 13 plan on July 22, 2022. Dkt. 20.

At the prior hearings on August 25, and September 12, 2022, it was determined the debtor had responded to all of the Trustee's objections except for providing the Trustee a copy of the Debra Elaine Trust. The motion was continued to allow the debtor to provide that document to the Trustee.

DISCUSSION

At the hearing xxxxxxxxxx

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