

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

**September 28, 2021 at 1:30 p.m.**

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1.	<a href="#">21-22203</a> -C-13	JOSE OCHOA	CONTINUED MOTION TO CONFIRM
	<a href="#">RJ-2</a>	Richard Jare	PLAN
			7-13-21 [ <a href="#">26</a> ]

**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. Dkt. 29.

<b>The Motion to Confirm is <span style="color: red;">XXXXXXXXXX</span></b>
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The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 10) filed on June 14, 2021.

**TRUSTEE'S OPPOSITION**

The trustee filed an Opposition (Dkt. 33) on August 2, 2021, opposing confirmation on the following grounds:

1. The 341 Meeting of creditors has not yet been concluded.
2. The debtor testified at the 341 Meeting of Creditors that he has not filed 2020 federal and state income tax returns.
3. The debtor testified he is the sole proprietor of National Pallets, but has not provided a profit and loss statement for the business.
4. The debtor testified that he has 4 employees and does not carry worker's compensation insurance.
5. The debtor testified that his monthly insurance premium expense, scheduled at \$1,840.00 a month, is actually \$1,900.00 per month.

**DEBTOR'S REPLY**

The debtor filed a Reply on August 19, 2021, requesting the court continue the hearing to September 28, 2021, because the 341 Meeting was again continued. Dkt. 36.

**September 28, 2021 at 1:30 p.m.**

## **TRUSTEE'S SUPPLEMENTAL OPPOSITION**

The trustee filed a Supplemental Opposition representing that the 341 Meeting has been concluded, the debtor has provided tax returns, and the debtor has provided evidence supporting the monthly insurance premium expense, scheduled at \$1,840.00 a month.

The trustee argues that the plan is still not feasible because the debtor testified he does not have worker's compensation insurance for his 4 workers. Additionally, the trustee has requested copies of debtor's personal bank statements from Wells Fargo Bank for the months of December 2020 through May 2021.

## **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, Jose Alfredo Ochoa, 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**

Thru #4

**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 19 days' notice was provided. Dkt. 35.

<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 provides for \$6,000 of priority claims. To date, priority claims reflected by filed proofs of claim to total \$240,225.14.
2. The trustee has requested, and the debtor has yet to provide, a copy of the debtor's non-filing spouse's 2020 Federal and State income tax returns. The trustee is uncertain if the plan is both feasible and the debtor's best efforts.
3. The debtor's Schedule J provides for charitable contributions of \$1,000.00 per month. The trustee has requested, and the debtor has yet to provide, evidence showing the tithing is a necessary expense for the debtor based on the debtor's prior history of tithing.

**DISCUSSION**

The trustee's arguments are well-taken. The debtor has not carried his burden to show the plan is feasible, and that all disposable income is being put towards the plan.

Without the debtor successfully objecting to proofs of claim filed in this case, the priority claims are roughly \$234,000.00 greater than anticipated. Furthermore, without providing evidence of the debtor's non-filing spouse's 2020 Federal and State income tax returns, it cannot be determined that the debtor is providing all disposable income to the plan, and that the debtor has enough income to fund the plan.

As to the tithing expense, the debtor filed a Declaration explaining that he stopped tithing over a year ago because he "could not afford it," but anticipates being able to afford it going forward. Dkt. 41. Without making a determination as to the credibility of this testimony, the court notes the declaration is vague on details. The declaration does not explain when tithing stopped, how much was donated regularly before stopping, and what caused the change in circumstances (whether it be increased expenses or decreased income). The debtor also has not explained why there is no documentation of the tithing from prior tax returns.

Without more detailed information, it cannot be determined that the debtor's tithing is a necessary expense.

The aforementioned grounds are reason to deny confirmation. 11 U.S.C. §§ 1322(a)(2), 1325(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.

3. [21-22614](#)-C-13 HENRY REED  
Jason Vogelpohl

OBJECTION TO CONFIRMATION OF  
PLAN BY TRANSPORTATION ALLIANCE  
BANK, INC  
9-9-21 [[36](#)]

**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 19 days' notice was provided. Dkt. 40.

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

Creditor Transportation Alliance Bank, Inc. d/b/a/ TAB Bank ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that the proposed dividend (\$80 for 6 months, then \$1,100 for 54 months) on its claim is not sufficient to pay off the claim, which the plan values at \$55,000.00 paid at 4 percent interest.

**DISCUSSION**

Creditor's Objection concludes that the plan's proposed dividend as to its claim is insufficient to pay the value of \$55,000.00 at 4.00% over the life of the 60 month plan. The mathematical analysis for such conclusion is not provided.

Nevertheless, the plan is plainly infeasible. A review of the Official Registry of Claims shows the priority claims are roughly \$234,000.00 greater than anticipated.

That 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 Creditor Transportation Alliance Bank, Inc. d/b/a/ TAB Bank, 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.

4. [21-22614](#)-C-13 HENRY REED  
[GAL](#)-1 Jason Vogelpohl

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-30-21 [[23](#)]

TRANSPORTATION ALLIANCE  
BANK, INC. 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. 29.

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

Creditor Transportation Alliance Bank, Inc. d/b/a/ TAB Bank ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 2016 Volvo VNL64T780 Tractor (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is not insuring the Property. Declaration, Dkt. 25. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$129,301.11, exceeds the value of the Property, which is \$55,000.00. *Id.*

**DEBTOR'S OPPOSITION**

The debtor filed an Opposition on August 30, 2021. Dkt. 30. The debtor represents that he is attempting to get the Property insured, and argues that the Property is necessary for an effective reorganization because he is a self-employed truck driver.

**DISCUSSION**

The Motion does not address whether the Property is necessary for an effective reorganization where the debtor is a self-employed truck driver.

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 Relief from the Automatic Stay filed by Creditor Transportation Alliance Bank, Inc. d/b/a/ TAB Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion is xxxxxxxxxxxxxxxx

**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 53 days' notice was provided. Dkt. 80.

**The Motion to Modify Plan is XXXX**

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 78) filed on May 21, 2021.

The trustee filed an Opposition on June 14, 2021, arguing the plan is not feasible because the plan payment is insufficient in months 9 through 36, and because the plan relies on a permanent loan modification which has yet to be executed and approved by the court. Dkt. 84.

The debtor filed a Response on June 21, 2021, providing a detailed mathematical analysis showing that the proposed \$202.85 payment in months 9 through 36 is sufficient. Dkt. 87. The Response also concedes that the plan relies on a permanent loan modification, and requests the hearing on this Motion be continued to September.

**TRUSTEE'S SUPPLEMENTAL REPLY**

The trustee filed a Supplemental Reply on June 23, 2021. Dkt. 90. The Supplemental Reply argues that the debtor's analysis understates the unsecured claim total due to a duplicative claim filed by the IRS, and mistakenly represents that the IRS' priority claim of \$1,516.82 has already been paid. The trustee reasserts that the plan payment is insufficient, but agrees with a continuance of the hearing on this Motion to September to allow the debtor to obtain the permanent loan modification.

**DEBTOR'S SUPPLEMENTAL RESPONSE**

The debtor filed a Response on September 22, 2021. Dkt. 107. The Response argues that Proof of Claim Nos. 5 and 6 are duplicative of each other, that Proof of Claim No. 5 should not be considered, and that Proof of Claim No. 6-2 filed by the IRS no longer asserts the \$1,516.82 priority claim.

**DISCUSSION**

The debtor's Response attempts to object to Proof of Claim No. 5 on the basis it is duplicative, and argues that the plan should therefore be confirmed. However, making such an objection to claim within a supplemental reply does not comply with Federal Rule of Bankruptcy Procedure 3007 regarding objections to claims.

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 Modify Plan filed by the debtor, Stacie Renae Pradie, 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**



**Final Ruling:** No appearance at the September 28, 2021 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 43 days' notice was provided. Dkt. 46.

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

No opposition to the Motion has been filed.

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

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

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

The Motion to Modify Plan filed by the debtor, Robert William Klein, 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 (Dkt. 43) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

7. [18-26935](#)-C-13 EARL HAYS  
GW-[5](#) Gerald White

MOTION FOR COMPENSATION FOR  
GERALD L. WHITE, DEBTORS  
ATTORNEY(S)  
8-27-21 [[64](#)]

**Final Ruling:** No appearance at the September 28, 2021 hearing is required.  
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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. 69.

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 Allowance of Professional Fees is granted.**

Gerald L. White, the Attorney ("Applicant") for the debtor Earl Lester Hays ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees for this Second and Final Request are requested for the period September 27, 2019, through August 23, 2021. Applicant requests fees in the amount of \$2,430.00 and costs in the amount of \$22.50.

Exhibit B is an itemized billing statement for the services rendered. Dkt. 68. The services generally relate to case management, objections to claims, and efforts to refinance the loan secured by the debtor's residence.

Pursuant to prior Interim Fee Applications the court has approved \$8,070.00 in fees and \$310.00 in expenses pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

#### **FEES AND COSTS & EXPENSES ALLOWED**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$2,430.00 and costs in the amount of \$22.50, and prior Interim Fees in the amount of \$8,070.00 and interim costs of \$310.00, are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,430.00
Costs and Expenses	\$22.50

pursuant to this Application and prior interim fees of \$8,070.00 and interim costs of \$310.00 as final fees pursuant to 11 U.S.C. § 330 in this case.

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 Gerald L. White ("Applicant"), Attorney for Earl Lester Hays, Chapter 13 Debtor, ("Client") 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, Professional employed by Client,

Fees in the amount of \$2,430.00  
Expenses in the amount of \$22.50,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.

The fees and costs pursuant to this Motion, and fees in the amount of \$8,070.00 and costs of \$310.00 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the Confirmed Chapter 13 plan.

8. [21-20838](#)-C-13 RON COLLA  
Peter Macaluso

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-26-21 [[72](#)]

ROCKY TOP RENTALS, LLC 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 33 days' notice was provided. Dkt. 78.

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

Creditor Rocky Top Rentals, LLC("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's rented portable storage building described as a Lofted Barn, Inventory No. WLB-D1074-1012-040518-T (the "Property").

Movant argues cause for relief from stay exists because the lease agreement expired on June 10, 2021; the debtor has retained the Property without making payments; the debtor does not have equity in the Property; and because the debtor does not intend to assume the lease.

The particular legal basis for relief from stay under 11 U.S.C. § 362 is not specified.

**DEBTOR'S OPPOSITION**

The debtor filed an Opposition on September 13, 2021. Dkt. 81. The debtor argues that the contract between the debtor and the Movant is "lease-to-own" agreement that should be considered a purchase-money security interest, and not a lease agreement.

The debtor argues further that the Movant's secured claim is provided for in the plan.

**MOVANT'S REPLY**

Movant filed a Reply on September 21, 2021. Dkt. 89. Movant argues that (1) by the agreement's own terms, the agreement is a lease and not a security agreement; (2) that the agreement is a lease under the meaning of C.C.P. § 1812.622(d).

**SUMMARY OF AGREEMENT**

The Rental Purchase Agreement and Disclosure Statement executed by the debtor and Movant was filed as Exhibit 1. Dkt. 76.

The agreement provides that the debtor make 36 monthly payments of \$172.45, totaling \$6,208.20. The agreement also offers options to buy the Property.

The first early purchase option is within 3 months of execution of

the agreement. In that event the purchase price is \$3,725.00 for the Property plus past due fees, less all of the \$172.45 periodic payments made by the debtor.

The second early purchase option is after 3 months of execution of the agreement. In that event the purchase price is \$3,725.00 for the Property plus tax and past due fees, multiplied by the amount of payments remaining divided by 36 (the total number of payments).

The default purchase option, which appears automatic, is that the debtor make all 36 monthly payments of \$172.45, totaling \$6,208.20.

Under the early purchase options, the debtor is paying less than the \$3,725.00 purchase price for the Property because the payments made reduce said price.

The Agreement provides that if all payments are made, the "cost of rental" is \$2,483.20 (the total payments of \$6,208.00 less the cash price of \$3,725.00 for the Property).

The Agreement gives notice that the debtor will not own the Property until all payments are made or one of the early purchase options are exercised. The Agreement gives the Movant a right to repossession upon default in payments.

In sum, the agreement contains what California Civil Code § 1812.623 indicates every rental-purchase agreement shall contain.

## **DISCUSSION**

The debtor's counsel has not argued that the Agreement does not meet the requirements for a rental-purchase agreement under California Civil Code § 1812.623. That Title makes clear that under California law a rental-purchase agreement is a lease, and "shall not be construed to be . . . [a] lease or agreement that constitutes a security interest." Cal. Civ. Code § 1812.622(d)(4). Furthermore, California law specifically prohibits a rental-purchase agreement from granting a security interest in any property. Cal. Civ. Code § 1812.624(10).

Roughly 40 states have enacted legislation finding rental-purchase agreements to be true leases. 2 UCC Trans Gd § 11:6.50. The rationale is that, if the lessee has the right to terminate the lease and "walk away" without penalty, before taking title or paying rentals essentially equal to the purchase price of the goods, then the transaction is a lease (not a sale or security interest). Id.

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 Relief from the Automatic Stay filed by Rocky Top Rentals, 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** the Motion is **xxxxxxxxxx**

**Final Ruling:** No appearance at the September 28, 2021 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 43 days' notice was provided. Dkt. 23.

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

No opposition to the Motion has been filed.

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

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

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

The Motion to Modify Plan filed by the debtor, David Benjamin Foy, 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 (Dkt. 23) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows over 35 days' notice was provided. Dkt. 158.

**The Motion to Confirm Modified Plan is denied.**

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 156) filed on July 6, 2021.

The trustee filed an Opposition (Dkt. 160) on September 9, 2021, opposing confirmation on the following grounds:

1. The debtor is \$2,510.94 delinquent in plan payments.
2. Debtor's plan fails to provide for post-petition arrears totaling \$2,407.76 to Class 1 Creditor, LoanCare LLC.
3. An order valuing American Honda Finance/Acura Financial Services claim has yet to be issued.
4. The plan provides for Sacramento County Utilities a Class 2 creditor. However, that creditor filed Proof of Claim, No. 13, asserting an unsecured claim.
5. The debtor has not filed supplemental Schedules I and J.
6. The plan proposes paying only \$2,510.94 per month. Based on the trustee's calculations, the plan mathematically requires a payment of \$2,773.90 per month.
7. The plan does not account for post-petition arrears that will come due after a COVID forbearance on the debtor's mortgage ceases.
8. The debtor's schedules list non-exempt assets totaling \$23,243.03. In order to meet the liquidation test, the debtor's plan must pay 100 percent to unsecured creditors, plus interest at the Federal Judgment Rate of 0.08 percent.

**DISCUSSION**

The majority of the trustee's grounds for opposing confirmation come to a single point: the plan is not feasible. The court agrees, based on the



trustee's aforementioned arguments, that the debtor has not carried his burden to show the plan is feasible.

Additionally, because the debtor's non-exempt assets' value exceeds the total unsecured claims, the plan must provide the Federal Judgment Rate of 0.08 percent to meet the liquidation test.

Both are reason to deny confirmation. 11 U.S.C. § 1325(a)(4) & (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 filed by the debtor, Mark Anthony Enos, 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.

**Final Ruling:** No appearance at the September 28, 2021 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 53 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 to Confirm is granted.**

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 29) filed on August 6, 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, Cynthia Jean Martin, 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. 29) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the September 28, 2021 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 36 days' notice was provided. Dkt. 61.

**The Motion to Confirm is denied as moot.**

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 59) filed on June 21, 2021.

The trustee filed an Opposition (Dkt. 64) on July 8, 2021, opposing confirmation on the basis that the plan does not explain how the debtor's mortgage forbearance will affect the plan, or when the forbearance arrearages will be paid.

#### **DISCUSSION**

The debtor filed a new Amended Plan on September 24, 2021. Dkt. 74. Therefore, the Motion will be denied as moot.

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

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

The Motion to Confirm filed by the debtor, Katrina Teresa Nopel, 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.

13. [21-20787](#)-C-13 MARY ANN LEWIS-JOHNSON MOTION TO CONFIRM PLAN  
[FF-1](#) AND AMOS JOHNSON 8-20-21 [[44](#)]  
Gary Fraley

**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 39 days' notice was provided. Dkt. 48.

**The Motion to Confirm is denied.**

The debtors filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 47) filed on August 20, 2021.

The trustee filed an Opposition (Dkt. 52) on September 7, 2021, opposing confirmation on the following grounds:

1. The plan proposes valuing the secured claims of Westlake Financial, Cadle Company, and YGreene. Until the court enters an order valuing those claims, the plan is not feasible.
2. The plan provides for Newrez as a Class 1 claim with zero arrears to be paid a post-petition mortgage payment of \$1,226.00. Mortgage creditor PHH Mortgage has filed a proof of claim listing pre-petition arrears of \$8,757.32.
3. The plan provides for a monthly plan payment of \$2,230.00. The trustee's calculations indicate the plan payment will need to be at least \$3,188.36 to be mathematically feasible.

**DISCUSSION**

All of the trustee's grounds for opposing confirmation come to a single point: the plan is not feasible. The court agrees, based on the trustee's aforementioned arguments, that the debtor has not carried his burden to show the plan is feasible.

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.

The Motion to Confirm filed by the debtors, Mary Ann Lewis-Johnson and Amos James Johnson, 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.