



**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

**November 14, 2023 at 10:00 a.m.**

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

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**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

**November 14, 2023 at 10:00 a.m.**

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1. [22-20928](#)-C-13 HENRY REED MOTION FOR DEFAULT OF  
[GAL](#)-1 Colby LaVelle STIPULATION TO MODIFY STAY  
AND/OR MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-17-23 [[98](#)]  
  
TRANSPORTATION ALLIANCE  
BANK, INC. VS.

**Final Ruling:** No appearance at the November 14, 2023 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 28 days' notice was provided. Dkt. 104.

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

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

Transportation Alliance Bank, Inc., dba 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 delinquent \$4,086.09 postpetition payments. Declaration, Dkt. 100. Movant also argues cause exists because a stipulated order was entered at the beginning of this case, which modified the automatic stay that would provide relief should the debtor default on payments to Movant and fail to cure or respond to the motion. *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 \$4,086.09 postpetition payments. The court also finds cause exists because the debtor is in default pursuant to the stipulation and has

**November 14, 2023 at 10:00 a.m.**

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failed to cure or respond to the motion.

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Transportation Alliance Bank, Inc., dba 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Property, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Volvo VNL64T780 Tractor ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

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

No other or additional relief is granted.

2. [23-22836](#)-C-13 ARTHUR ROBINSON  
[CAS](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY ALLY BANK  
9-22-23 [[19](#)]

**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 53 days' notice was provided. Dkt. 22.

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

Creditor Ally Bank ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that the plan fails to pay the present value of Creditor's secured claim at an appropriate discount rate.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on October 31, 2023. Dkt. 33. Debtor concedes that the interest rate on Creditor's secured claim is too low. However, debtor argues that the rate should be no more than prime plus 1%. Thus, debtor contends that the creditor's claim should be valued at 9.6% interest.

**DISCUSSION**

Creditor opposes confirmation on the basis that the plan proposes paying its claim at three percent interest. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.5%, plus a 1.25% risk adjustment, for a 9.75% interest rate.

That is reason to deny confirmation. Therefore, the Objection is sustained.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Ally 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.

3. [23-21154](#)-C-13 MARK WILLEFORD  
[LGT](#)-1 Peter Macaluso

CONTINUED MOTION TO DISMISS  
CASE  
9-13-23 [[36](#)]

**Final Ruling:** No appearance at the November 14, 2023 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 39.

**The Motion to Dismiss is denied without prejudice.**

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 court denied confirmation of the Chapter 13 plan on July 11, 2023.

A review of the docket confirms the proposed Chapter 13 plan was denied confirmation, and no plan is set for confirmation hearing. Dkts. 29,30.

The debtor filed an opposition representing that a new plan would be filed with a motion to confirm to be heard on November 14, 2023. This motion was continued to allow the debtor an opportunity to confirm his plan.

The debtor has filed a plan, which has drawn no opposition. Because it appears debtor is actively prosecuting the case, the Motion is denied without prejudice.

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, Lilian  
Tsang, 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  
Dismiss is denied without prejudice.

**Final Ruling:** No appearance at the November 14, 2023 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 47 days' notice was provided. Dkt. 53.

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. 45) filed on September 27, 2023.

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, Mark Willeford, 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. 45) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), 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.

5. [23-21562](#)-C-13 EMILIA/EMIL ARDELEAN OBJECTION TO DEBTOR'S CLAIM OF  
[CLH](#)-2 Stephan Brown EXEMPTIONS  
10-10-23 [[46](#)]

**No Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f) (1) procedure which requires 28 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 50.

**The Objection to Claimed Exemptions is ~~XXXXXXXXXXXX~~**

Creditors Carmelita Mancina and Houria El Massioui (Creditors) filed this Objection objecting to the debtors' claimed exemptions pursuant to Cal. Code Civ. Proc. § § 704.220 and 704.225 because the debtors have exempted more than the minimum amount and have not demonstrated that the additional amounts are necessary for the debtors' support.

The debtors filed an opposition (dkt. 60) on October 31, 2023 asserting that they have amended the Schedule C to reflect the amount exempted under C.C.C.P § 704.220. Debtors further contend that the amended amount exempted under C.C.C.P § 704.225 is necessary to support them because they solely rely on social security for their income, already receive significant support from their son, and have medical expenses due to debtor's throat cancer.

**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 Claimed Exemptions filed by Carmelita Mancina and Houria El Massioui having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is ~~XXXXXXXXXXd~~

6. [23-22374](#)-C-13 WILLIE WATSON  
[PLC](#)-2 Peter Cianchetta

MOTION TO AVOID LIEN OF JESSICA  
L. WILLIAMS  
9-27-23 [[56](#)]

**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. 70.

**The Motion to Avoid Judicial Lien is denied without prejudice.**

This Motion requests an order avoiding the judicial lien of Jessica L. Williams and Emma LaVerne Williams ("Creditors") against property of the debtor commonly known as 8975 Beckington Dr., Elk Grove, California ("Property").

A judgment was entered against the debtor in favor of Creditors in the amount of \$727,829.83. Exhibit #2, Dkt. 59. An abstract of judgment was recorded with Sacramento County on October 24, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$700,000.00 as of the petition date. Dkt. 80. There is an unavoidable and junior lien that totals \$403,942.00 as of the commencement of this case as stated on Debtor's Schedule D. Dkt. 13. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$538,250.00 on Amended Schedule C. Dkt. 80.

Creditors filed an opposition (dkt. 99) on October 31, 2023. Creditors represent that the state court judgment was entered against the debtor for fraud, conversion, misrepresentation, and financial elder abuse. Creditors contend that debtor's homestead exemption is limited to \$189,050.00 pursuant to 11 U.S.C. § 522(q)(1)(B). Further, creditor represents that the debtor submitted an appraisal with the Sacramento County Superior Court that valued the property at \$770,000.00, not \$700,000.00 as the debtor contends here.

**DISCUSSION**

This court has previously discussed 522(q) and its implications. See In re Oliver, 649 B.R. 206 (Bankr. E.D. Cal. 2023). Given the state court judgment, and Creditor's allegations, this court is not prepared to avoid the judicial lien at this time.

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 Willie Watson, Sr. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

7. [23-22374](#)-C-13 WILLIE WATSON  
[PLC](#)-3 Peter Cianchetta

MOTION TO AVOID LIEN OF BOWLES  
AND VERNA LLP  
9-27-23 [[61](#)]

**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. 72.

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Bowles & Verna LLP ("Creditor") against property of the debtor commonly known as 8975 Beckington Dr., Elk Grove, California ("Property").

A judgment was entered against the debtor in favor of Creditor in the amount of \$61,734.24. Exhibit 4, Dkt. 64. An abstract of judgment was recorded with Sacramento County on August 4, 2022, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$700,000.00 as of the petition date. Dkt. 80. The unavoidable and senior liens that total \$403,942.00 as of the commencement of this case are stated on Debtor's Schedule D. Dkt. 13. Further, another judicial lien, senior to both this lien and the mortgage, has been recorded in the amount of \$727,829.83 on October 24, 2019. *Id.*; See Item 6 above. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$538,250.00 on Amended Schedule C. Dkt. 80. The other judgment lien creditor has raised an objection to the claim of objection. However, even if the objection is sustained, the debtor would still be entitled to an exemption in the amount of \$189,050.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), and considering the objection to the homestead exemption, there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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 Willie Watson, Sr. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Bowles & Verna LLP, California Superior Court for Contra Costa County Case No. C21-01958, recorded on August 4, 2022, Document No. 202208040504, with the Sacramento County Recorder, against the real property commonly known as 8975 Beckington Dr., Elk Grove, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

8. [22-21477](#)-C-13 VICTOR NAVARRO AND CONTINUED MOTION TO MODIFY PLAN  
FF-[3](#) KRISTINA ZAPATA NAVARRO 8-25-23 [[83](#)]  
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 40 days' notice was provided. Dkt. 89.

**The Motion to Modify Plan is denied.**

The debtors filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 87) filed on August 25, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 102) on September 18, 2023, opposing confirmation on the following grounds:

1. The debtor is delinquent \$7,765.00 and the plan fails to suspend the delinquency;
2. The plan fails the liquidation test;
3. The plan provides for the incorrect amount of postpetition arrears to Rushmore Loan Management;
4. The plan is not feasible, whether the motion for compensation below is approved or not;
5. The plan incorrectly accounts for payments already made to the Trustee; and
6. The debtors' motion and declarations are inconsistent as to debtor's income and expenses.

**DISCUSSION**

The motion was continued from the prior hearing to allow the debtor and the trustee to see if they could work out the issues raised in the opposition. A review of the docket shows that nothing has been filed since the hearing on October 4, 2023.

The debtor is \$7,765.00 delinquent in plan payments. Declaration, Dkt. 103. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

The debtor has non-exempt assets totaling \$1,180.16. The plan

provides for a 3 percent dividend to unsecured claims, which is less than the 6.64 percent dividend necessary to meet the liquidation test. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

The plan mathematically requires a payment of \$3,161.14 per month, which is greater than the proposed \$2,891.45 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what 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, 1325(a), and 1329. The Motion is denied, and the plan is not confirmed.

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

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

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

**IT IS ORDERED** that the Motion is denied, and the plan is not confirmed.

**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. 51.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the Fourth Amended Chapter 13 Plan (Dkt. 42) filed on September 24, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 61) on October 26, 2023, opposing confirmation on the following grounds:

1. Debtor failed to file a declaration in support of the motion;
2. The plan is not feasible
3. The plan does not provide for a distribution to unsecured creditors even though the debtor's total monthly disposable income will provide a 100% dividend; and
4. Debtor's Statement of Financial Affairs needs to be amended to reflect the debtor's business income.

**DISCUSSION**

Although debtor's counsel has filed a declaration with the motion, the debtor himself has not filed a declaration in support of the motion. That is reason to deny confirmation.

The plan mathematically requires a payment of \$3,154.20 per month, which is greater than the proposed \$2,031.69 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The plan proposes a monthly payment that is less than all of the debtor's disposable income. That is reason to deny confirmation. 11 U.S.C. § 1325(b)(1).

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, Kevin Don Smith, 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.

10. [23-20489](#)-C-13 WANMUENG WADKHIAN  
[ALG](#)-1 Matthew DeCaminada

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-13-23 [[78](#)]

FLOYD E. CARLTON, TRUSTEE OF  
THE CARLSON FAMILY TRUST,  
DATED MARCH 27, 2012 VS.

**Final Ruling:** No appearance at the November 14, 2023 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 29 days' notice was provided. Dkt. 86.

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

**The Motion for Relief from the Automatic Stay is denied as moot.**

The instant case was dismissed on November 1, 2023, for failing to file, set and serve a motion to confirm plan and delinquency of plan payments. Dkt. 89.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) **the time the case is dismissed;** or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) **revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.**

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of November 1, 2023, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on November 1, 2023.

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 Floyd E. Carlton, Trustee of the Carlson Family Trust dated March 27, 2012 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice as moot, this bankruptcy case having been dismissed on November 1, 2023 (prior to the hearing on this Motion). The court, by this Order, confirms that the

automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Wanmueng Wadkhian ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 1014 Erdman Way, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the November 1, 2023 dismissal of this bankruptcy case.

11. [23-22792](#)-C-13 LAZARO/ELSY MARTINEZ  
[SKI](#)-1 Mark Wolff

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-5-23 [[23](#)]

MERCEDES-BENZ VEHICLE TRUST  
VS.

**Final Ruling:** No appearance at the November 14, 2023 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 39 days' notice was provided. Dkt. 33.

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

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

Mercedes-Benz Vehicle Trust Successor in Interest to Daimler Trust ("Movant") filed this Motion seeking relief from the automatic stay as to the debtors' 2020 Mercedes-Benz GLE (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors are delinquent \$2,134.26 postpetition and \$3,087.04 prepetition payments. Declaration, Dkt. 26. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the vehicle is leased and there is no equity to the debtors. *Id.*

#### **DEBTOR'S NON-OPPOSITION**

Debtors filed a Statement of Non- Opposition on October 24, 2023. Dkt. 43. Debtors assert that they do not oppose the motion and surrendered the vehicle prior to the filing of the case.

#### **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 debtors are delinquent \$2,134.26 postpetition and \$3,087.04 prepetition payments. The court also finds cause exists pursuant to 11 U.S.C. § 362(d)(2) because the vehicle is leased and there is no equity to the debtors.

#### **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 Mercedes-Benz Vehicle Trust Successor in Interest to Daimler 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** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Property, under its security agreement, loan documents granting it a lien in the asset identified as a 2020 Mercedes-Benz GLE ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

**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.

12. [23-22893](#)-C-13 CHERYL RYCE  
[LGT](#)-1 Nicholas Wajda

OBJECTION TO CONFIRMATION OF  
PLAN BY LILIAN G. TSANG  
10-12-23 [[29](#)]

**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 33 days' notice was provided. Dkt. 32.

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

The Chapter 13 Trustee, Lilian G. Tsang ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan was not signed by debtor or debtor's attorney;
2. The amount to be paid through the plan to debtor's attorney is not consistent with the Debtor's Rights and Responsibilities and Disclosure of Compensation of Attorney for Debtor;
3. Debtor's Schedule I is not consistent with the pay advises provided to the Trustee;
4. The plan does not provide for a dollar amount to be paid to creditor holding a Class 1 claim with prepetition arrears; and
5. The plan incorrectly classifies creditor Ariela Rotschild as a holding a class 1 claim instead of a class 2 claim.

**DISCUSSION**

The debtor herself has not signed the plan or filed a declaration in support of confirmation. That is reason to deny confirmation.

The plan incorrectly classifies the claim of Ariel Rotschild as class 1, and does not state the dollar amount to be paid towards the arrearage of secured creditor. Notwithstanding whether the plan provides for the prepetition arrearage as the Trustee argues, the debtor has not carried her burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

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

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

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

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

13. [23-22893](#)-C-13 CHERYL RYCE  
[MWP](#)-1 Nicholas Wajda

OBJECTION TO CONFIRMATION OF  
PLAN BY ARIELA ROTSCCHILD,  
TRUSTEE OF THE ROTSCCHILD TRUST  
DATED NOVEMBER 21, 2001  
10-9-23 [[21](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 25.

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

Creditor Ariel Rotschild, Trustee of the Rotschild Trust Dated November 21, 2001 ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that the plan incorrectly classifies Creditor's claim as a class 1 claim.

**DISCUSSION**

Class 1 claims "includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence." Plan at 3.07.

Creditor's proof of claim (Claim No. 3-1) demonstrates that creditor's note matured on November 1, 2022. Therefore, the secured claim does not mature after the completion of the plan and is misclassified as a Class 1 claim.

The debtor has not demonstrated the plan is feasible because the claims filed in the case are different than scheduled. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by Ariel Rotschild, Trustee of the Rotschild Trust Dated November 21, 2001, 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.

14. [23-22297](#)-C-13 STEPHEN/FLORA ADDISON OBJECTION TO CLAIM OF HERITAGE  
[LGT](#)-1 Julius Cherry COMMUNITY CREDIT UNION, CLAIM  
NUMBER 12-1  
10-3-23 [[26](#)]

**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. Dkt. 28.

**The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.**

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 12-1, filed by Heritage Community Credit was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is September 20, 2023. Notice of Bankruptcy Filing and Deadlines, Dkt. 12. The Proof of Claim subject to this Objection was filed September 26, 2023.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

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, Lilian G. Tsang, 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 12-1 of Heritage Community Credit is sustained, and the claim is disallowed in its entirety.