

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Sacramento Federal Courthouse  
501 I Street, 7<sup>th</sup> Floor  
Courtroom 28, Department A  
Sacramento, California

**DAY: WEDNESDAY**  
**DATE: APRIL 21, 2021**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

**RULINGS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

**"No Ruling"** means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

**"Tentative Ruling"** means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

**"Final Ruling"** means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

**CHANGES TO PREVIOUSLY PUBLISHED RULINGS**

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

**ERRORS IN RULINGS**

Clerical errors of an insignificant nature, e.g. nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [20-25101](#)-A-13     **IN RE: WILLIAM/JANELL WHITE**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
3-24-2021    [\[67\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

### **11 U.S.C. § 1325(a) (6)**

#### Schedules I and J

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan is feasible, and that the debtor is able to comply with its terms. Here the debtors' Schedule I identifies the debtors' income as \$4,857.00, and Schedule J identifies the debtors' expenses as \$5,217.32, ECF No. 1. That leaves net monthly income of negative \$359.92. The trustee also calculated that the plan would take 77 months to fund in violation of 11 U.S.C. § 1322(d).

#### Inaccurate Schedules

The debtor has not shown her amended Schedules I and J are accurate and therefore failed to show the proposed plan complies with § 1325(a)(6). The court will therefore sustain the objection under § 1325(a)(6).

### **11 U.S.C. § 521(e) (2) (A)**

Among the documents that a chapter 13 debtor must surrender to the trustee is a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A). The debtor did not provide the trustee any such document for the most

recent tax year. Therefore, the court will sustain the trustee's objection under § 521(e) (2) (A).

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

2. [20-25101](#)-A-13     **IN RE: WILLIAM/JANELL WHITE**  
[GMR-2](#)

MOTION FOR COMPENSATION FOR GEOFFREY RICHARDS, FORMER  
CHAPTER 7 TRUSTEE  
3-15-2021     [\[54\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **No Ruling**

3. [21-20401](#)-A-13     **IN RE: RAFAEL QUIROZ**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
3-17-2021     [\[30\]](#)

PETER MACALUSO/ATTY. FOR DBT.

#### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c) (4), 9014-1(f) (2); no written opposition required

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c) (4), 9014-1(f) (2) (C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing

schedule. Absent such opposition, the court will adopt this tentative ruling.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

#### **11 U.S.C. § 1325(a) (4)**

The debtor has not proved the plan complies with the liquidation analysis under 11 U.S.C. § 1325(a) (4). The debtor is married and has failed to file a spousal waiver (signed by the spouse and debtor) for use of the California State Exemptions under C.C.P. § 703.140. Therefore the debtor has not shown that unsecured creditors would receive in disbursements at least the amount they would receive in a Chapter 7.

#### **11 U.S.C. § 1325(a) (6)**

11 U.S.C. § 1325(a) (6) requires that a chapter 13 plan is feasible and that the debtor is able to comply with its terms. The debtor failed to provide the trustee with copies of payment advises or other evidence of income received within the 60-day-period pre-petition. Also, the debtor failed to file a detailed statement showing gross receipts and ordinary and necessary expenses relating to the debtor's business operations. The debtor also did not file six months of profit and loss statements. The debtor therefore hasn't shown that he is able to afford plan payments under §1325(a) (6).

#### **11 U.S.C. § 521**

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a) (1) (B) (iv), Fed. R. Bankr. P. 1007(b) (1) (E). The debtor has not done so. The debtor also failed to file a spousal waiver (signed by the spouse and the debtor) for use of the California State Exemptions under C.C.P. § 703.140. The debtor also did not provide an attachment to Schedule I showing gross receipts and ordinary and necessary expenses despite stating in Schedule I the debtor is receiving business income. The debtor has not filed profit and loss statements from the six months pre-petition in relation to business operations.

For the foregoing reasons, the trustee will sustain the objection.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

4. [20-24902](#)-A-13     **IN RE: ISIDRO FLORES**  
[PGM-4](#)

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION  
3-19-2021     [\[52\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

5. [20-24713](#)-A-13     **IN RE: BONITA BROOKS**  
[DPC-3](#)

MOTION TO DISMISS CASE  
3-24-2021     [\[45\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

6. [21-20417](#)-A-13     **IN RE: DANE CUMMINGS**  
[DPC-2](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK  
3-17-2021     [\[38\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

**Final Ruling**

**Objection:** Objection to Discharge

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Sustained

**Order:** Civil Minute Order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been

filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **11 U.S.C. § 1328(f) (1)**

11 U.S.C. § 1328(f) (1) states that "a court shall not grant a discharge of all debts provided for in the plan...if the debtor has received a discharge in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter."

Here the debtor filed this chapter 13 case in February 2021. However, on March 3, 2020, the debtor received a discharge under 11 U.S.C. § 727 in a case filed under Chapter 7. Therefore, the court will sustain the trustee's objection to discharge under § 1328(f) (1).

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's objection to discharge has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained.

7. [21-20417](#)-A-13     **IN RE: DANE CUMMINGS**  
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.  
2-18-2021     [\[19\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
CASSANDRA RICHEY/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan  
**Notice:** LBR 3015-1(c) (4); no written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C.

§ 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

#### **DOCKET CONTROL NUMBER**

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. The movant used the same docket control number, EAT-1, as for a subsequently filed Motion/Application to Restrict, Redact, or Seal (ECF No. 29). When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the objection to confirmation is overruled as moot.

8. [21-20222](#)-A-13     **IN RE: KATINA MILLER**  
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK  
3-10-2021     [\[29\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

#### **Final Ruling**

**Objection:** Objection to Discharge

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Sustained

**Order:** Civil Minute Order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

## **11 U.S.C. § 1328(f) (1)**

11 U.S.C. § 1328(f) (1) states that "a court shall not grant a discharge of all debts provided for in the plan...if the debtor has received a discharge in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter."

Here the debtor filed this chapter 13 case in January 2021. However, on October 20, 2020, the debtor received a discharge under 11 U.S.C. § 727 in a case filed under Chapter 7. Therefore, the court will sustain the trustee's objection to discharge under § 1328(f) (1).

## **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's objection to discharge has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained.

9. [20-25226](#)-A-13     **IN RE: BRIAN RIDGWAY AND DEANNA BENNETT**  
RIDGWAY  
[TLA-1](#)

MOTION TO MODIFY PLAN  
3-15-2021    [\[20\]](#)

THOMAS AMBERG/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

## **Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d) (2), 9014-1(f) (1); trustee's non-opposition filed

**Disposition:** Granted

**Order:** Prepared by movant, approved by the trustee

**Subject:** First Amended Chapter 13 Plan, March 15, 2021

## **DEFAULT OF RESPONDENT**

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f) (1) (B). None has been



filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **CHAPTER 13 PLAN MODIFICATION**

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. “[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge’s discretion and good judgment in reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 (“[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan.”); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

10. [20-24729](#)-A-13     **IN RE: RYAN SAHADEO**  
[DPC-2](#)

MOTION TO DISMISS CASE  
3-10-2021    [\[39\]](#)

W. SHUMWAY/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

11. [20-25037](#)-A-13      **IN RE: GREGG MITCHELL**

MOTION TO CONFIRM PLAN  
3-4-2021    [\[45\]](#)

BONNIE BAKER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

**Disposition:** Continued to May 4, 2021, at 9:00 a.m.

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

### **L.B.R. 3015-1**

Here, feasibility of the plan depends on the granting of a motion to avoid lien for Family Law Lien. Pursuant to Local Bankruptcy Rule 3015-1(i), the debtor must file, serve and set for hearing a lien avoidance motion and the hearing on avoidance must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the court may deny confirmation of the plan. Although the debtor has filed a motion to avoid lien, ECF No. 40, it was set for hearing that has been continued to May 4, 2021. The court cannot grant confirmation of the plan given the current circumstances and will continue this hearing to coincide with the said continued Motion to Avoid Lien.

### **DOCKET CONTROL NUMBER**

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the motion is continued to May 4, 2021 at 9:00 a.m.

12. [20-23442](#)-A-13     **IN RE: AERON WALLACE**  
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-19-2021    [[31](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
NANCY LEE/ATTY. FOR MV.  
U.S. BANK, N.A. VS.; RESPONSIVE PLEADING

**No Ruling**

13. [21-20342](#)-A-13     **IN RE: ZEDOLION MILTON**  
[DPC-1](#)

MOTION TO DISMISS CASE  
3-24-2021    [[42](#)]

**No Ruling**

14. [21-20342](#)-A-13     **IN RE: ZEDOLION MILTON**  
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
3-25-2021    [[46](#)]

**Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation.

*In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

### **11 U.S.C. § 1325(a) (6)**

11 U.S.C. § 1325(a) (6) requires that a chapter 13 plan is feasible, and that the debtor is able to comply with its terms.

#### Delinquency

The debtor is delinquent \$2,987.00 in plan payments. The next scheduled payment of \$2,987.00 is due on March 25, 2021. The debtor has paid \$0.00 into the plan to date.

#### Inaccurate Schedules

The debtor failed to show that Schedules A/B, D, E/F, I, J, the Statement of Financial Affairs, and Form 122-C are accurate and complete, ECF No. 11. The court will therefore sustain the objection under § 1325(a) (6).

### **11 U.S.C. § 521**

Section 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. See *In re Robertson*, 2010 WL 5462500 (Bankr. S.C. 2010); *In re Nichols*, 2009 WL 2406172 (Bankr. E.D. N.C. 2009).

The debtor did not provide the trustee the past two years of tax returns as required under 11 U.S.C. §521(e) (2) (A); FRBP 4002(b) (3), or 60 day pay advices under 11 U.S.C. §521(a) (1) (B) (iv) at least 7 days prior to the meeting of creditors. The debtor also did not provide the trustee a photographic identification or proof of Social Security number as required under 11 U.S.C. §521(e) (2) (A); FRBP 4002(b) (3). The court will therefore sustain the objection under § 521.

### **11 U.S.C. §§ 1325(a) (3), (7)**

11 U.S.C. §§ 1325(a) (3), (7) require that the chapter 13 debtor file a chapter 13 plan in good faith. The debtor has filed six prior bankruptcy cases of those four were filed, and dismissed, in the last six years: (C13 #20-25694, filed 12/30/20/dismissed 1/26/21; C7 #16-21269, filed 3/1/16/dismissed 3/14/16; C7 #15-29852 filed 12/29/15/dismissed 1/11/16; C13 #14-30273 filed 10/16/14/dismissed 4/27/15). The debtor has not explained why this case will work when the prior cases were not successful. Without more, the court will sustain the objection under §§ 1325(a) (3), (7).

### **NON-COMPLIANCE WITH LOCAL RULES**

Local Rule 3015-1(c) requires the use of this district's form chapter 13 plan. This district's form chapter 13 plan, Form EDC 3-080, has undergone revisions over the years. The most recent revision is the form that debtors are required to use.

In this case, the debtor has not proposed a chapter 13 plan on the correct form plan. The debtor used Official Form 113 for the plan, ECF No. 12. The court will sustain the objection on this ground.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

15. [21-20342](#)-A-13     **IN RE: ZEDOLION MILTON**  
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.  
2-26-2021    [\[20\]](#)

CASSANDRA RICHEY/ATTY. FOR MV.

#### **No Ruling**

16. [21-20342](#)-A-13     **IN RE: ZEDOLION MILTON**  
[ETW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-12-2021    [\[28\]](#)

EDWARD TREDER/ATTY. FOR MV.  
RAJINDER SHARMA VS.; RESPONSIVE PLEADING

#### **No Ruling**

17. [21-20342](#)-A-13     **IN RE: ZEDOLION MILTON**  
[GB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST, N.A.  
3-23-2021    [\[38\]](#)

ERICA LOFTIS/ATTY. FOR MV.

**No Ruling**

18. [20-24947](#)-A-13     **IN RE: DANIEL MCARTHEY**  
[GC-1](#)

MOTION TO CONFIRM PLAN  
2-24-2021    [\[50\]](#)

JULIUS CHERRY/ATTY. FOR DBT.  
TRUSTEE AND CREDITOR NON-OPPOSITION

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); trustee's non-opposition  
filed

**Disposition:** Granted

**Order:** Prepared by the movant, approved by the trustee

**Subject:** First Amended Chapter 13 Plan, February 24, 2021

**DEFAULT OF RESPONDENT**

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

**CHAPTER 13 PLAN CONFIRMATION**

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan. The order confirming the plan shall state that the debtor will promptly modify the plan to address creditor Home Point Financial Corporation's pre-petition arrears should the debtor not modify the loan by August 31, 2021.

19. [15-22149](#)-A-13     **IN RE: MATTHEW MCKEE**  
[PGM-5](#)

MOTION FOR APPROVAL OF ASSIGNMENT OF ATTORNEY FEES  
3-23-2021    [[142](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

20. [19-26149](#)-A-13     **IN RE: SALLY DAVIDSON**  
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE  
2-3-2021    [[52](#)]

JEFFREY MEISNER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

21. [19-26149](#)-A-13     **IN RE: SALLY DAVIDSON**  
[JMM-2](#)

MOTION TO MODIFY PLAN  
3-2-2021    [[57](#)]

JEFFREY MEISNER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Modification of a Chapter 13 Plan

**Disposition:** Denied without prejudice

**Order:** Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rules of Bankruptcy Procedure 3015(g). The certificate of service shows that Jefferson Capital Systems, LLC, Pinnacle Service Solutions, LLC, and Quantum3 Group LLC have not received notice.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

22. [20-24851](#)-A-13     **IN RE: MARGO SWIFT**  
[DPC-4](#)

MOTION TO DISMISS CASE  
3-24-2021    [\[51\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **CASE DISMISSAL**

#### Failure to prosecute

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 6 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors.

#### Delinquency

Cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$525.00.

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,



IT IS ORDERED that the motion is granted. The court hereby dismisses this case.

23. [17-20552](#)-A-13     **IN RE: MARK/LAURA MCMULLEN**  
[MJD-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH WAYPOINT HOMES  
3-23-2021    [\[57\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Approve Compromise of Controversy

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

## **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtors' motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as exhibit and filed at docket no. 61.

IT IS FURTHER ORDERED that the settlement proceeds shall be apportioned in accordance with the Client Distribution Form, Exhibit 4, ECF No. 61.

24. [21-20452](#)-A-13     **IN RE: EMIL GALABOV**  
[DPC-1](#)

MOTION TO DISMISS CASE  
3-22-2021    [[18](#)]

**No Ruling**

25. [21-20452](#)-A-13     **IN RE: EMIL GALABOV**  
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
3-24-2021    [[23](#)]

**No Ruling**

26. [19-27456](#)-A-13     **IN RE: TYNITRA LANE**  
[SLE-2](#)

MOTION TO MODIFY PLAN  
3-12-2021    [[47](#)]

STEELE LANPHIER/ATTY. FOR DBT.  
**DEBTOR DISMISSED: 3/17/21**

**No Ruling**

27. [19-27456](#)-A-13     **IN RE: TYNITRA LANE**  
[SLE-3](#)

MOTION TO VACATE DISMISSAL OF CASE  
3-31-2021    [[57](#)]

STEELE LANPHIER/ATTY. FOR DBT.  
DEBTOR DISMISSED: 03/17/2021

**No Ruling**

28. [19-27461](#)-A-13     **IN RE: RICHARD ACOSTA**  
[DPC-3](#)

MOTION TO DISMISS CASE  
4-7-2021    [[119](#)]

MICHAEL HAYS/ATTY. FOR DBT.

**Final Ruling**

Since this case has been dismissed, the court will drop this matter from the calendar as moot.

29. [19-27461](#)-A-13     **IN RE: RICHARD ACOSTA**  
[FEC-1](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL  
3-18-2021    [[102](#)]

MICHAEL HAYS/ATTY. FOR DBT.

**Final Ruling**

This case already having been dismissed the court will drop this matter from the calendar as moot.

30. [19-26764](#)-A-13     **IN RE: JASON SCOTT**  
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE  
2-3-2021    [[22](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

31. [19-26764](#)-A-13     **IN RE: JASON SCOTT**  
[GEL-1](#)

MOTION TO MODIFY PLAN  
3-8-2021    [\[29\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

**Disposition:** Denied

**Order:** Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 (“[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan.”); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

### **11 U.S.C. § 1325(a)(6)**

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan is feasible, and that the debtor is able to comply with its terms.

The debtor’s previously-confirmed plan and the modified plan provide for treatment of Shellpoint Mortgage Servicing in Class 1. Due to the failure of the debtor to make plan payments timely under the terms of the previously-confirmed plan, the trustee lacked sufficient funds to pay the post-petition contract installments to Shellpoint Mortgage Servicing in the amount of \$1,178.20 for February 2021 (\$1,150.51, plus \$27.69 for an underpayment in January 2021). While the modified plan does attempt to specify a cure of the post-petition arrearage, it does not indicate which month was missed. Also, the plan states that \$1,150.51 is due to Shellpoint Mortgage Servicing as post-petition arrears. However, the trustee calculates arrears to be \$1,178.20, Declaration, ECF No. 43. The debtor did not provide an accurate plan and therefore has not shown ability to pay. The court will deny modification.

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies modification of the chapter 13 plan.

32. [16-20573](#)-A-13     **IN RE: FELICIANO RIOS**  
[MET-5](#)

MOTION TO MODIFY PLAN  
3-2-2021    [\[99\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

33. [19-24273](#)-A-13     **IN RE: CHRISTINE CROWNOVER**  
[CK-3](#)

MOTION TO MODIFY PLAN  
3-11-2021    [\[55\]](#)

CATHERINE KING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

34. [19-27775](#)-A-13     **IN RE: RANKIN LYMAN**  
[PGM-1](#)

CONTINUED MOTION TO MODIFY PLAN  
2-4-2021    [\[34\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); trustee's non-opposition filed

**Disposition:** Granted

**Order:** Prepared by movant, approved by the trustee

**Subject:** First Amended Chapter 13 Plan, February 4, 2021

**CHAPTER 13 PLAN MODIFICATION**

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

35. [19-26277](#)-A-13     **IN RE: JUAN MONGALO AND MILAGROS MONGALO**  
ROBLETO  
[MMN-7](#)

MOTION TO MODIFY PLAN  
3-8-2021    [\[161\]](#)

MICHAEL NOBLE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

36. [21-20477](#)-A-13     **IN RE: CHARLES/DONNA SWIM**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
3-24-2021    [\[22\]](#)

MARK BRIDEN/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Overruled

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The sole basis of the trustee's objection to confirmation was that this plan's feasibility depends on the debtor's Motion to Value Collateral of Bank of America (Item 37). Since the said motion to value has been granted on a final basis, the court will overrule the trustee's objection.

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is overruled. A confirmation order shall be submitted by the trustee after approval by debtor's counsel.

37. [21-20477](#)-A-13     **IN RE: CHARLES/DONNA SWIM**  
[MWB-1](#)

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA  
3-9-2021    [\[14\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

**Notice:** LBR 9014-1(f)(1); trustee's non-opposition filed

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 1945 Herbscenta Lane, Redding, CA 96003.

The court values the collateral at \$72,000.00. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured, and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).



## **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The real property collateral located at 1945 Herbscenta Lane, Redding, CA 96003 has a value of \$72,000.00. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

38. [18-25184](#)-A-13     **IN RE: MICHELE DAVENPORT**  
[DVW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-1-2021    [\[70\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
DIANE WEIFENBACH/ATTY. FOR MV.  
U.S. BANK, N.A. VS.; RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 1447 Crystal Springs Dr, Woodland, CA 95776

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan. The trustee has disbursed a total of \$29,948.86 towards the debtor's ongoing mortgage to the creditor. Based on these disbursements, the debtor is now delinquent 3

postpetition payments totaling \$3,797.43. Cause exists to grant relief under § 362(d)(1).

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

U.S. Bank's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1447 Crystal Springs Dr, Woodland, CA 95776, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

39. [21-20989](#)-A-13     **IN RE: LISA BAZILE**  
[MRL-1](#)

MOTION TO VALUE COLLATERAL OF SAFE CREDIT UNION  
3-20-2021    [[11](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Notice:** LBR 9014-1(f)(1); trustee's non-opposition filed

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2018 Kia Sorento. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$18,000.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2018 Kia Sorento has a value of \$18,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$18,000 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

40. [19-23696](#)-A-13     **IN RE: MICHAEL WILTON AND DAWN DUNN**  
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE  
8-21-2020    [[45](#)]

RICHARD HALL/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
DEBTORS DISMISSED: 3/17/21

**Final Ruling**

The case having been dismissed the matter is dropped as moot.

41. [19-23696](#)-A-13     **IN RE: MICHAEL WILTON AND DAWN DUNN**  
[RAH-8](#)

CONTINUED MOTION TO MODIFY PLAN  
1-22-2021    [[104](#)]

RICHARD HALL/ATTY. FOR DBT.  
DEBTORS DISMISSED: 3/17/21

**Final Ruling**

The case having been dismissed the matter is dropped as moot.