

**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: TUESDAY**  
**DATE: MAY 4, 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. [21-20401](#)-A-13      **IN RE: RAFAEL QUIROZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-12-2021    [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.

**Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

2. [21-20401](#)-A-13      **IN RE: RAFAEL QUIROZ**  
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
3-31-2021    [\[35\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Objection:** Objection to Claim of Exemptions for Failure to File Spousal Waiver

**Disposition:** Overruled

**Order:** Civil minute order

The debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objected to the debtor's claim of exemption because the debtor had not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure other than the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

But the debtor has filed the spousal waiver since the trustee brought this objection. The objection will be overruled.

3. [20-24902](#)-A-13     **IN RE: ISIDRO FLORES**  
[PGM-3](#)

MOTION TO CONFIRM PLAN  
3-19-2021    [\[47\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

4. [21-20811](#)-A-13     **IN RE: LANDER GREEN**  
[KLG-2](#)

MOTION TO CONFIRM PLAN  
3-15-2021    [\[16\]](#)

ARETE KOSTOPOULOS/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:** Denied

**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).

**11 U.S.C. § 521**

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor's Schedule I hasn't been amended to reflect his new employer mentioned at the 341 meeting (BGI Construction). Also, the debtor did not give the trustee copies of pay advices as requested to verify his new income.

In addition, the debtor did not check either box in § 3.05 of the form plan, ECF No. 3. Therefore, the debtor hasn't made clear if attorney chose to comply with LBR 2016-1(c). The plan states the attorney received \$2,313.00 before filing and \$1,687.00 will be paid through plan. An amended Statement of Rights and Responsibilities

and a Disclosure Statement of Attorney's Fees, (ECF No. 43-44) implicate that the attorney opted into L.B.R. 2016-1(c)(1) , stating that the attorney has received \$2,000.00 pre-filing and accepts a total fee of \$4,000.00. Nonetheless the plan has not been amended.

#### **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 confirm 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 confirmation of the chapter 13 plan.

5. [18-23816](#)-A-13     **IN RE: LISA SLEDGE**  
[MET-5](#)

MOTION TO APPROVE LOAN MODIFICATION  
4-2-2021    [[147](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **No Ruling**

6. [20-25016](#)-A-13     **IN RE: FREDERICK BRISBY**  
[JV-4](#)

MOTION TO CONFIRM PLAN  
4-13-2021    [[69](#)]

JASON VOGELPOHL/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **No Ruling**

7. [19-24217](#)-A-13     **IN RE: BRETT BAILEY**  
[SMJ-2](#)

MOTION TO MODIFY PLAN  
3-19-2021    [\[52\]](#)

SCOTT JOHNSON/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, March 22, 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. The debtor shall also indicate Schedules I & J (ECF No. 57) were supplements with an effective date.

8. [21-20417](#)-A-13     **IN RE: DANE CUMMINGS**  
[MOH-1](#)

MOTION TO CONFIRM PLAN  
3-15-2021    [\[33\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

9. [21-20821](#)-A-13     **IN RE: AISHA HAMILTON**  
[MMM-1](#)

MOTION TO AVOID LIEN OF LINCOLN AUTOMOTIVE FINANCIAL SERVICE  
3-25-2021    [\[10\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service for Lincoln Automotive Financial Service, ECF No. 16.

10. [20-24628](#)-A-13     **IN RE: NGOC LIEN NGUYEN**  
[PGM-1](#)

MOTION TO CONFIRM PLAN  
3-23-2021    [\[34\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

11. [21-20536](#)-A-13     **IN RE: MICHAEL GARDINER**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
4-7-2021    [\[20\]](#)

STEPHAN BROWN/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. § 521**

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) 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); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5)

documentation of monthly expenses claimed under §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least 7 days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. Section 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). As one commentator noted, "Cooperate" is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Here the debtor has failed to provide 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documentation exists.

Also, at the Meeting of the Creditors, the trustee requested that the Voluntary Petition be amended to list previous cases that were filed so the trustee may assess feasibility of the plan. To date, no amendment has been filed. The debtor has failed to comply with 11 U.S.C. § 521(a)(3). For the foregoing reasons, the court will sustain this objection under § 521.

#### **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 admitted at the 341 Hearing that his corporation pays his personal expenses directly and the business bank statements that he provided from Bank of the West show several personal expense transactions. The debtor admitted at the Meeting of Creditors that his girlfriend contributes to the household with her unemployment income. Schedule I does not show any unemployment income contribution from his girlfriend. The trustee requested that Schedules I and J be amended to reflect the correct income and expenses and to do date no amendments have been filed with the court. Therefore, the court will sustain the objection under § 1325(a)(6).



## 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.

12. [21-20536](#)-A-13      **IN RE: MICHAEL GARDINER**  
[RMP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS,  
INC.  
4-7-2021    [\[24\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
RENEE PARKER/ATTY. FOR MV.

### Tentative Ruling

**Objection:** Creditor'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).

**IN RE ZIMMER, 313 F.3d 1220 (9<sup>TH</sup> Cir. 2002)**

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).

Here the debtor admitted that the property which the creditor has a secured claim against is the debtor's principal residence, ECF No. 1. The debtor claimed in the schedules that the value of the property is \$445,848.00, ECF No. 12. The debtor attempted to lower the value by only claiming \$222,924.00. The movant filed a proof of claim (No. 7-1), stating the total claim amount on the movant's lien was \$88,059.59 on the date of filing, and prepetition arrears were \$62,189.82. Schedule D states that Carrington Mortgage Services was owed \$142,911.00, and that Creditor was owed \$55,000.00, ECF No. 12. Carrington Mortgage Services filed a proof of claim as Claim No. 2-1, showing a total claim of \$140,291.63.

The plan places the creditor in Class 2, and crams down the creditor's lien to \$55,000.00 at 3.75% (ECF No. 10). However, even under the debtor's reduced value of the property there is still \$82,632.37 in equity wholly secured on the creditor's lien in the primary residence. Under the *In re Zimmer* analysis, the debtor may not avoid or cram down the secured creditor's claim. For the foregoing reasons, the court will sustain this objection to confirmation.

#### **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.

Real Time Resolutions, Inc.'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.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan

has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

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

CONTINUED MOTION TO AVOID LIEN OF THE FAMILY LAW CENTER  
3-3-2021     [\[40\]](#)

BONNIE BAKER/ATTY. FOR DBT.

**No Ruling**

14. [20-25037](#)-A-13     **IN RE: GREGG MITCHELL**

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

BONNIE BAKER/ATTY. FOR DBT.

**No Ruling**

15. [21-20739](#)-A-13     **IN RE: JANET CLARK**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
4-13-2021     [\[26\]](#)

MARK SHMORGON/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).

#### **OBJECTION TO CONFIRMATION**

Section 1308 of the Bankruptcy Code provides: "Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a). The Internal Revenue Service has filed a Proof of Claim showing, "estimated" taxes, which indicates that no returns have been filed for tax years 2017, 2018, 2019 and 2020, (Proof of Claim No. 1-1).

#### **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 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.

16. [20-20251](#)-A-13     **IN RE: MATTHEW/ROSE MARGOLIS**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-25-2021    [\[46\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.  
VW CREDIT, INC. VS.; TRUSTEE NON-OPPOSITION

#### **Final Ruling**

This motion having been withdrawn, ECF No. 55, the court will drop this matter from the calendar as moot.

17. [21-20652](#)-A-13     **IN RE: ROBERTO/SANDRA BATISTA**

OBJECTION TO CONFIRMATION OF PLAN BY WEST COAST SERVICING,  
INC.

4-7-2021     [[22](#)]

GARY FRALEY/ATTY. FOR DBT.

BRENT MEYER/ATTY. FOR MV.

**No Ruling**

18. [21-20652](#)-A-13     **IN RE: ROBERTO/SANDRA BATISTA**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK

4-7-2021     [[18](#)]

GARY FRALEY/ATTY. FOR DBT.

**No Ruling**

19. [21-21154](#)-A-13     **IN RE: JEAN APPLING**  
[WAJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY

4-13-2021     [[9](#)]

D. ENSMINGER/ATTY. FOR DBT.

WARREN JONES/ATTY. FOR MV.

DONTON CONSTRUCTION, INC. VS.; RESPONSIVE PLEADING

**No Ruling**

20. [20-25356](#)-A-13     **IN RE: CHRISTOPHER FIGUEROA**

MOTION TO VACATE DISMISSAL OF CASE

3-23-2021     [[71](#)]

GORDON BONES/ATTY. FOR DBT.

DEBTOR DISMISSED: 03/23/2021; RESPONSIVE PLEADING

**Final Ruling**

The motion is denied without prejudice. The record does not reflect service, which should have been made on all creditors. Moreover, the declaration is not signed under penalty of perjury and contains an insufficient factually showing. A civil minute order will issue.

21. [19-26161](#)-A-13     **IN RE: CIRILO/RIZEL LARON**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-29-2021    [[107](#)]

PETER MACALUSO/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
NISSAN MOTOR ACCEPTANCE CORPORATION VS.; RESPONSIVE PLEADING

**No Ruling**

22. [20-22366](#)-A-13     **IN RE: PHILIP/YVETTE HOLDEN**  
[RPZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-22-2021    [[28](#)]

MATTHEW GILBERT/ATTY. FOR DBT.  
ROBERT ZAHRADKA/ATTY. FOR MV.  
FEDERAL HOME LOAN MORTGAGE CORPORATION VS.; RESPONSIVE PLEADING

[Since posting its original rulings, the court has changed its intended ruling on this matter].

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 158 Bret Harte Way, Vallejo, California 94589

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).

**STAY RELIEF**

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 as both prepetition and postpetition payments are past due. The debtor has defaulted on 15 pre-petition payments totaling \$27,419.60 and 3 post-petition payments totaling \$4,916.10. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). 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.

Federal Home Loan Mortgage Corporation'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 158 Bret Harte Way, Vallejo, California 94589, 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.

23. [19-24669](#)-A-13     **IN RE: RAMON CAPARAS**  
[AF-7](#)

MOTION TO MODIFY PLAN  
3-15-2021    [[116](#)]

ARASTO FARASAD/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final 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 the following creditors or parties in interest have not received notice: Citibank, N.A., New Residential Mortgage, Alliant Capital Management, CW Nexus Credit Card Holdings I, LLC, CashCall, Inc. C/O Weinstein & Riley, Seattle, WA, Exeter Finance LLC Oklahoma City, OK, LVNV Funding, LLC C/O Resurgent Capital Service, Greenville, SC, Premier Bankcard, LLC St. Cloud, MN, Speedy Rapid Cash Wichita, KS, Woodcreek Oaks Owners' Association.

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.

24. [21-20477](#)-A-13     **IN RE: CHARLES/DONNA SWIM**  
[DPC-2](#)

OBJECTION TO DISCHARGE BY DAVID CUSICK  
3-24-2021    [\[26\]](#)

MARK BRIDEN/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 November 11, 2018, 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.

25. [20-25080](#)-A-13     **IN RE: KARAMDEEP SINGH**  
[PGM-1](#)

MOTION TO CONFIRM PLAN  
3-19-2021    [[53](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

26. [21-20686](#)-A-13     **IN RE: ALICE RANSOM**  
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK  
MELLON  
4-8-2021    [[21](#)]

ANH NGUYEN/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.

**No Ruling**

27. [21-20686](#)-A-13     **IN RE: ALICE RANSOM**  
[KAZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK  
MELLON  
4-8-2021    [[17](#)]

ANH NGUYEN/ATTY. FOR DBT.  
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

**No Ruling**

28. [21-20791](#)-A-13      **IN RE: ELIZABETH ROHDE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-12-2021    [\[17\]](#)

YASHA RAHIMZADEH/ATTY. FOR DBT.  
\$79 INSTALLMENT FEE PAID 4/14/2021

**Final Ruling**

The installment having been paid, the order to show cause is discharged. The case will remain pending.

29. [21-20791](#)-A-13      **IN RE: ELIZABETH ROHDE**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
4-14-2021    [\[18\]](#)

YASHA RAHIMZADEH/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:** Continued to May 18, 2021 at 9:00 a.m.

**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).

**CONTINUATION**

Here the trustee objected to confirmation of the plan because the plan runs longer than 60 months based on a student loan scheduled for \$270,174.00 where the plan proposes \$1,045.13 for 60 months with 100% to unsecured claims. No claim has been filed by the student loan creditor, and the debtor is on a fixed income and testified her loan is in deferment. The claims bar date is May 14, 2021. Therefore, the court will continue this matter to May 18, 2021 - after the claims bar date.

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection is continued to May 18, 2021 at 9:00 a.m.

30. [20-25492](#)-A-13      **IN RE: MARIA DEL SOCORRO/RENE ORTIZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-14-2021    [\[76\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.