

**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: FEBRUARY 17, 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. [20-25403](#)-A-13     **IN RE: LARRY/LISA MCLAIN**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
1-21-2021     [\[19\]](#)

GARY FRALEY/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.

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)**

Section 1325(a)(6) of the Bankruptcy Code requires that a proposed chapter 13 plan be feasible in such a form that "the debtor will be able to make all payments under the plan and to comply with the plan," 11 U.S.C. § 1325(a)(6). Here the plan calls for payments of \$823.00 for 60 months and 0% to unsecured creditors. The debtors placed the creditor Chrysler Capitol in Class 2(A) and stated that \$19,415.26 is to be paid with 5.25% interest and a monthly dividend of \$368.63, ECF No. 2. However, the plan's Nonstandard Provisions state: "7.1 Class 2(B) secured claim of Chrysler Capitol in the amount of \$19,415.26 is based on the 22 percent price of vehicle trade-in," (emphasis added), and continues with: "7.2 The 22 percent price of vehicle trade-in in the amount of \$5,476.09 is added to the unsecured debt," ECF No. 2. The debtors have not filed a motion to value the collateral against Chrysler Capitol and there is no corresponding creditor to the nonstandard provision in Class 2(B). Chrysler Capitol filed a Proof of Claim in the amount of \$25,498.76, Claim No. 1-1. The debtors have not made clear the creditor's treatment under the plan and failed to show their ability to make plan payments. The court will sustain the trustee's objection under 11 U.S.C. § 1325(a)(6).

### **11 U.S.C. § 1322(d)**

Absent application of the CARES Act, 11 U.S.C. § 1329(d) (which is not applicable here), a chapter 13 plan may not exceed five years, 11 U.S.C. § 1322(d). The plan as proposed will complete in 67 months

as opposed to the 60 months proposed due to fund Class 2(A) creditor Chrysler Capitol's secured claim (amount per the Proof of Claim). This exceeds the maximum amount of time allowed under 11 U.S.C. §1322(d). The court will sustain the trustee's objection under 11 U.S.C. § 1322(d).

#### **11 U.S.C. § 1325(b)**

The debtor has not shown that the plan meets the "best efforts test" under 11 U.S.C. § 1325(b). The debtor is below median income, ECF No. 1, and proposes a 0% plan with payments of \$823.00 per month for 60 months. However, Question #5 of the Statement of Financial Affairs reports the debtors received Federal tax refunds in the amount of \$9,640 for year 2018, and \$9,519 for year 2019. The Statement is silent regarding any state refunds the debtors may have received over the past two years, *Id.* The debtors have not listed any future tax refunds on Schedule I, *Id.* Also, the debtors have amended Schedules B and C, which now includes estimated 2020 tax refunds, ECF No. 1, indicating that the debtors will likely receive continued tax refunds. The trustee requests that any total refund over \$2,000 be committed to the plan. For the foregoing reasons, the court will sustain 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 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. [20-25104](#)-A-13     **IN RE: MARTIN/LINDA GLASENAPP**  
[SS-2](#)

MOTION TO CONFIRM PLAN  
1-12-2021    [\[35\]](#)

SCOTT SHUMAKER/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.

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)**

Section 1325(a)(6) of the Bankruptcy Code requires that a proposed chapter 13 plan be feasible in such a form that "the debtor will be able to make all payments under the plan and to comply with the plan," 11 U.S.C. § 1325(a)(6). The motion caption and motion indicate that co-debtor Linda Glasenapp is deceased, ECF No. 35. L.B.R. 1016-1 requires filing of a Notice of Death, in part because Fed. R. Bankr. Proc. 1016 may result in the case being dismissed or, "if further administration is possible and in the best interest of the parties", the case may proceed. While the debtor has addressed his income in his declaration, ECF No. 38, the debtor has not filed a supplemental Schedule J, and while no life insurance was scheduled, ECF No. 1, the debtor does not have the legal authority to act for the deceased co-debtor unless they are given that authority by the court. Until such time as this matter is addressed, the debtor would not be able to proceed with the plan, 11 U.S.C. §1325(a)(6).

### **11 U.S.C. § 1325(a)(5)**

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the

plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5). Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim. See *id.* §§ 1325(a)(5)(B)(ii), 1322(b)(5) (permitting the curing of any default and ongoing maintenance payments on long-term debt maturing after the plan's term).

In a chapter 13 plan, Class 4 claims are secured claims which mature after completion of the plan, are not in default, and are not modified by the plan, EDC 3-080 § 3.10. Here the debtor has not shown that PennyMac Loan Services, LLC was properly placed in Class 4. According to the creditor's Proof of Claim (Claim No. 11-1), the debtors are in default as of the date of petition \$1,175.77. The debtor's counsel provided a declaration regarding his contacts with an unnamed person working at the attorney firm who filed the claim, ECF No. 39, but no current mortgage statement showing the status of the mortgage has been filed as an exhibit and authenticated by the debtor. Unless the debtor cured the delinquency (where the case was filed November 5, 2020, the claim was filed December 17, 2020, and the Mortgage Proof of Claim Attachment does not show any payments after filing), the claim should be classified in Class 1. The court will deny confirmation under § 1325(a)(5).

#### **11 U.S.C. § 1325(a)(9)**

Under 11 U.S.C. § 1325(a)(9), the court cannot confirm a plan if the debtor does not file "all applicable Federal, State, and local tax returns as required by section 1308." 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).

Claim No. 19 filed by the Franchise Tax Board shows that no tax returns were filed for 2017, 2018 & 2019. Although the debtor testified that he believes such returns are not required, ECF No. 38, the debtor did not provide the legal basis for his statement as required by L.B.R. 9014-1(d)(3). The court will deny confirmation under § 1325(a)(9).

#### **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.

3. [19-20007](#)-A-13     **IN RE: NICHOLAS BONANNO**  
[MEV-6](#)

MOTION TO SELL  
1-28-2021    [[132](#)]

MARC VOISENAT/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **No Ruling**

4. [20-25016](#)-A-13     **IN RE: FREDERICK BRISBY**  
[JV-3](#)

MOTION TO CONFIRM PLAN  
1-21-2021    [[58](#)]

JASON VOGELPOHL/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.

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)**

Section 1325(a)(6) of the Bankruptcy Code requires that a proposed chapter 13 plan be feasible in such a form that "the debtor will be able to make all payments under the plan and to comply with the plan," 11 U.S.C. § 1325(a)(6).

### Delinquency

Here the debtor is \$836.00 delinquent in plan payments to the trustee. The next scheduled payment of \$836.00 is due on February 25, 2021.

### Non-standard provision § 7.01

The proposed plan's nonstandard provisions in Section 7.01 call for ongoing payments to be paid directly by the debtor to Sun West Mortgage Company, Inc. and not the trustee. However, the debtor did not sustain his burden of proof that he will be able to comply with the provisions of the proposed plan.

The pre-petition arrears owed to the creditor is large (\$28,562.33), and was not originally disclosed by the debtor in the prior plan, ECF No. 2. The debtor also failed to schedule the arrears, ECF No. 1.

The debtor admitted to not paying the ongoing mortgage payment in October and November 2020, ECF No. 52, and the creditor on the claim appears to indicate that three post-petition payments have been missed, Claim No. 7. Therefore the debtor hasn't shown he will be able to make ongoing payments to the creditor.

The debtor failed to disclose in a declaration his reason for delinquency to the creditor. The debtor incurred the prepetition arrears since November 1, 2019, Claim No. 7, and the debtor has not provided any declaration in support of this motion to confirm, to show why the delinquency occurred, to show why the delinquency is not likely to reoccur, and to show why the debtor can be relied upon to make these payments. Only the attorney's declaration was filed, and the declaration only entails an unsupported conclusion of law that "the Debtor's First Amended Chapter 13 Plan satisfies the requires of 11 U.S.C. §1325," ECF No. 60. Given such evidence, the court can not conclude the debtor demonstrated his ability to make payments to the creditor according to the plan.

The debtor also did not provide proof that he is current in the ongoing payments to the creditor as called for by the plan.

The non-standard provisions call for quarterly declarations with documentary evidence of proof of ongoing mortgage payments once the plan is confirmed. However, the court finds the debtor has not sustained his burden of proving he will be able to comply with the plan under § 1325(a)(6). For the foregoing reasons, the court will deny confirmation of the plan.

### **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. [17-24928](#)-A-13     **IN RE: DUANE ORSBURN**  
[DBL-1](#)

MOTION TO MODIFY PLAN  
1-6-2021    [\[34\]](#)

BRUCE DWIGGINS/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.

### **11 U.S.C. 1325(a)(6)**

Section 1325(a)(6) of the Bankruptcy Code requires that a proposed chapter 13 plan be feasible in such a form that "the debtor will be able to make all payments under the plan and to comply with the plan," 11 U.S.C. § 1325(a)(6). The debtor is delinquent \$433.00 under the terms of the proposed plan. The debtor is delinquent \$3,283.00 under the plan confirmed October 23, 2017, ECF No. 22. Therefore, the debtor has not demonstrated that the proposed plan is feasible under § 1325(a)(6).

The debtor also did not submit supplements to Schedule I or Schedule J in support of the motion. The most recent Schedule I was filed 07/27/17, ECF No. 1. The schedule reflected the debtor was disabled and reflected only Social Security income of \$1,514.00. The schedule also reported the non-filing spouse was a server with monthly income of \$1,443.51. However, the debtor stated in his declaration in support of this motion that his principal source of income is from wages from employment in his own construction business, ECF No. 36. The debtor did not provide any current information for the non-filing spouse. The debtor therefore has not shown that under his current financial circumstances the proposed modified plan is feasible or that he has ability to comply with its terms. For the



foregoing reasons, the court will not grant modification of the plan.

**11 U.S.C. § 1322(d)**

Absent application of the CARES Act, 11 U.S.C. § 1329(d) (which is not applicable here), a chapter 13 plan may not exceed five years, 11 U.S.C. § 1322(d). Here the trustee calculates the plan will take 65 months to complete. This is due to the confirmed plan, ECF No. 5, not providing for priority claims No. 3 (California Department of Tax and Fee Administration \$994.44) and No. 6 (Employment Development Department \$866.37). The debtor has not included these claims in his calculations. The debtor also did not indicate an amount for priority claims in § 3.12 of the proposed plan. The court cannot grant modification of a chapter 13 plan that funds beyond 60 months and will sustain the trustee's objection under § 1322(d).

**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.

6. [17-24928](#)-A-13     **IN RE: DUANE ORSBURN**  
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE  
12-18-2020    [\[30\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### **Tentative 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).

For the reasons stated in the motion, 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. As of December 18, 2020, payments were delinquent in the amount of \$2,650.00. The debtor was also to pay \$530.00 on the 25<sup>th</sup> of every month.

### **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 has been presented to the court. Having entered the default of the 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

7. [20-25435](#)-A-13     **IN RE: ANGELA BEASLEY**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
1-21-2021    [[15](#)]

TIMOTHY WALSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

8. [20-25435](#)-A-13     **IN RE: ANGELA BEASLEY**  
[RMP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AJX MORTGAGE TRUST II  
1-21-2021    [[19](#)]

TIMOTHY WALSH/ATTY. FOR DBT.  
RENEE PARKER/ATTY. FOR MV.

**No Ruling**

9. [19-22839](#)-A-13     **IN RE: RAYMOND/CAROLE CLOUTIER**  
[MET-6](#)

MOTION TO SELL  
1-7-2021    [[87](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

10. [20-24643](#)-A-13     **IN RE: JAMES RHOADES**  
[MB-1](#)

MOTION TO CONFIRM PLAN  
1-4-2021    [\[32\]](#)

MICHAEL BENAVIDES/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.

### **11 U.S.C. § 1325(a)(6)**

A chapter 13 plan must be feasible under 11 U.S.C. § 1325(a)(6). The debtor is \$800.00 delinquent in plan payments to the trustee. Another payment of \$800.00 will be due before the hearing. The court will deny confirmation of the plan under 11 U.S.C. § 1325(a)(6).

### **11 U.S.C. § 1322(d)**

Absent application of the CARES Act, 11 U.S.C. § 1329(d) (which is not applicable here), a chapter 13 plan may not exceed five years, 11 U.S.C. § 1322(d). Here the amended plan proposes the debtor shall make two payments of \$560.00, then \$800 per month for 43 months and will pay a 100% dividend paid to unsecured creditors (\$22,859.82), ECF No. 35. Three unsecured creditors have filed a Proof of Claim: JP Mortgage Chase for \$10,818.51, (Claim No. 1), JP Morgan Chase for \$10,788.19 (Claim No. 2) and Ethan Conrad for \$23,052.50, (Claim No. 3), totaling \$44,659.92. According to the trustee's calculation, it would take 65 months for these creditors to be paid 100% of their claims. The court cannot grant a plan that will fund in longer than sixty months. The court will deny confirmation of the plan under 11 U.S.C. § 1322(d).

### **11 U.S.C. § 1325(b)**

The debtor has not shown that the plan meets the "best efforts test" under 11 U.S.C. § 1325(b). The debtor is above median, ECF No. 1. In the amended Schedule I, ECF No. 31, the debtor identified a second job as an "Independent Living Skills Instru" (sic) at Community Resources Center with a gross income of \$2,599.00 per month and net income of \$2,360.00 per month. Coupled with his non-filing spouse's net income of \$5,912.82 and his retirement income of \$830.00, the debtor's net monthly income was \$9,102.82. The debtor's amended Schedule J, ECF No. 31, shows a significant increase in expenses

(\$3,200.00 in the original schedule, ECF No. 1; now \$6,662.00). However, the trustee believes that even with the significant increase in expenses, the debtor's net income is sufficient to fund a 100% plan in under 36 months.

In addition, Form 122C-1 does not accurately list all sources of income or expenses, and the motion to confirm plan (ECF No. 32) and the debtor's declaration (ECF No. 34) are silent as to the means test. Form 122C-2 states the debtor's monthly disposable income is \$5,590.95. If this number is correct, the debtor is not paying all of his monthly disposable income under § 1325(b). For the foregoing reasons, the court will deny confirmation under 11 U.S.C. § 1325(b).

#### **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.

#### **11. [20-25356](#)-A-13 IN RE: CHRISTOPHER FIGUEROA**

OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT LLC  
1-15-2021 [[26](#)]

GORDON BONES/ATTY. FOR DBT.  
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

#### **No Ruling**

#### **12. [20-25356](#)-A-13 IN RE: CHRISTOPHER FIGUEROA [DPC-1](#)**

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK  
1-21-2021 [[33](#)]

GORDON BONES/ATTY. FOR DBT.

#### **No Ruling**

13. [16-26160](#)-A-13     **IN RE: KEVIN/SHERRIE FLOYD**  
[MET-2](#)

MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, THE DEBTORS  
ATTORNEY(S)

1-11-2021    [[112](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

14. [18-23080](#)-A-13     **IN RE: JUANITA ROEHRIG**  
[RPZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY

1-15-2021    [[54](#)]

PAULDEEP BAINS/ATTY. FOR DBT.  
ROBERT ZAHRADKA/ATTY. FOR MV.  
WELLS FARGO BANK, N.A. VS.; RESPONSIVE PLEADING

**No Ruling**

15. [20-24781](#)-A-13     **IN RE: PHILIP/KATHRYN MALAN**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P  
CUSICK

11-25-2020    [[16](#)]

JULIUS CHERRY/ATTY. FOR DBT.

**No Ruling**

16. [20-24781](#)-A-13     **IN RE: PHILIP/KATHRYN MALAN**  
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MORTGAGE  
SOLUTIONS OF COLORADO, LLC

10-28-2020    [[11](#)]

JULIUS CHERRY/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

**Final Ruling**

This objection having been withdrawn, ECF No. 37, the court will  
drop this matter from the calendar as moot.

17. [19-24685](#)-A-13     **IN RE: EMILIA ARDELEAN**  
[TBG-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
10-11-2019    [\[37\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

The matter is continued to March 2, 2021, at 9:00 a.m. to coincide with the creditor's Motion to Compel and Request for Sanctions, CLH-5. A civil minute order will issue.

18. [19-24187](#)-A-13     **IN RE: JOSEPH/MARYLOU LUTISAN**  
[WW-2](#)

MOTION TO MODIFY PLAN  
12-24-2020    [\[59\]](#)

MARK WOLFF/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, December 24, 2020

#### **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.

19. [20-25492](#)-A-13     **IN RE: MARIA DEL SOCORRO/RENE ORTIZ**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
1-20-2021    [\[30\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **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.

### **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.



20. [20-25492](#)-A-13     **IN RE: MARIA DEL SOCORRO/RENE ORTIZ**  
[ETW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY YULI HU  
1-8-2021    [\[18\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
EDWARD WEBER/ATTY. FOR MV.

### **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.

### **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.

21. [19-20995](#)-A-13     **IN RE: RUDY GONZALEZ, AND ROBERTA GONZALEZ**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
12-18-2020    [\[121\]](#)

SUSAN TERRADO/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **No Ruling**

22. [19-20995](#)-A-13     **IN RE: RUDY GONZALEZ, AND ROBERTA GONZALEZ**  
[SBT-6](#)

MOTION TO MODIFY PLAN  
1-5-2021    [\[125\]](#)

SUSAN TERRADO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Modify Confirmed Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Denied as moot

**Order:** Civil minute order

**THE MODIFIED PLAN HAS BEEN SUPERSEDED**

Chapter 13 debtors may modify a confirmed plan before completion of payments under the plan. 11 U.S.C. § 1329(a). This motion requests approval of a modified plan under § 1329(a). But the requested modified plan has been superseded by another modified plan. Because another modified plan has superseded the modified plan to be confirmed by this motion, the court will deny the motion as moot.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion to modify the plan is denied as moot.

23. [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.  
RESPONSIVE PLEADING

**No Ruling**