

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

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

DAY: TUESDAY
DATE: FEBRUARY 23, 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. [18-26800](#)-A-13 **IN RE: MICHAEL/EMMA POST**
[PLG-3](#)

MOTION TO SELL
2-9-2021 [[45](#)]

STEVEN ALPERT/ATTY. FOR DBT.

No Ruling

2. [20-23104](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
11-10-2020 [[60](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

3. [20-23104](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[PGM-3](#)

MOTION TO CONFIRM PLAN
1-19-2021 [[100](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

4. [21-20407](#)-A-13 **IN RE: ROBERTA BOGUE**
[GEL-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE, INC.
2-4-2021 [\[8\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: LBR 9014-1(f)(2); 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). 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 2015 Nissan Versa Note S. 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 \$4,662.00.

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 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 2015 Nissan Versa Note S has a value of \$4,662.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$4,662.00 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.

5. [20-25612](#)-A-13 **IN RE: CHESTER KATZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-27-2021 [\[13\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

No Ruling

6. [21-20222](#)-A-13 **IN RE: KATINA MILLER**
[MOH-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-8-2021 [\[13\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied as moot

Order: Civil minute order

11 U.S.C. § 362(c)(3)(B) states, "if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period *but was dismissed*, other than a case refiled under a chapter other than chapter 7 after

dismissal under section 707(b)...on motion of a party in interest for continuation of the automatic stay...the court may extend the stay in particular cases as to any or all creditors," 11 U.S.C. § 362(c)(3)(B) (emphasis added). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. 11 U.S.C. § 362(c)(3)(B) (emphasis added).

The debtor's pending case was filed under chapter 13 on January 25, 2021 and this present motion to extend stay appears set within 30 days of filing. However, the debtor's previous case 17-25217 was not dismissed. Instead, it was closed on January 1, 2021. By its terms, § 362(c) applies only if the previous case pending within the 1-year period preceding the petition was dismissed. The motion will be denied as moot.

7. [20-24729](#)-A-13 **IN RE: RYAN SAHADEO**
[WSS-1](#)

MOTION TO CONFIRM PLAN
12-31-2020 [\[24\]](#)

W. SHUMWAY/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)

The debtor has the burden of showing ability to comply with terms of the proposed chapter 13 plan and its feasibility under 11 U.S.C. § 1325(a)(6). Also, balloon payments or otherwise that are involved in plan payments are contingent on a speculative event to take place during the life of the plan, *See In Re Gavia* 24 BR 573,574 (9th Cir. BAP 1982).

Here Class 1 creditor U.S. Bank Trust NA has filed a proof of claim against the debtor's principal residence, Claim No. 3-3, stating an

arrearage of \$111,549.86. The debtor's plan proposes to pay the creditor \$317.00 per month and two balloon payments - \$36,059.00 on March 1, 2021 and \$41,059.00 on April 1, 2021, ECF No. 28. However, the debtor's schedules show a monthly net income of \$3,300.00 a month, ECF No. 1. The debtor failed to provide a declaration or any other evidence in support of his promise to make the two balloon payments to U.S. Bank Trust NA according to the plan. Since the court cannot confirm a plan based on a speculative promise, the court will deny confirmation of plan under § 1325(a)(6).

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 has failed to provide the trustee a business examination checklist, bank account statements for the six-month period prior to the filing of the petition, proof of all required insurance and proof of required licenses or permits. The court will deny confirmation under § 521.

11 U.S.C. § 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).

The debtor has failed to comply with this tax-filing requirement. The debtor provided the trustee with only unsigned copies of the last four years of tax returns. Also, the debtor stated on February 4, 2021 that not all tax years were filed yet. The court will deny confirmation under § 1308.

11 U.S.C. § 1325(a)(4)

This plan does not comply with the liquidation test under 11 U.S.C. § 1325(a)(4), which requires that unsecured creditors would receive a higher distribution than they would in a chapter 7 proceeding. The debtor proposes a 0% plan. However, according to Schedules A, B and C, the total value of non-exempt property in the estate is \$59,575.00, ECF No. 1. At the Meeting of the Creditors, the debtor testified he owes domestic support obligation payments. The trustee requested that Schedules I and J be amended to reflect the obligations. The debtor failed to file amended schedules I and J. For the foregoing reasons, the court will deny confirmation under § 1325(a)(4).

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 due to large claims filed by creditors,

the trustee estimates that this plan will fund in 101 months. This plan is therefore overextended 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 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.

8. [19-24237](#)-A-13 **IN RE: ELENA PEREZ GONZALEZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
12-18-2020 [[106](#)]

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

9. [19-24237](#)-A-13 **IN RE: ELENA PEREZ GONZALEZ**
[PGM-3](#)

MOTION TO MODIFY PLAN
1-15-2021 [[113](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

10. [20-23552](#)-A-13 **IN RE: REGINALD/RAMONA BURTON**
[DPC-6](#)

CONTINUED MOTION FOR EXAMINATION OF ATTORNEY FEES
12-23-2020 [[51](#)]

THOMAS MOORE/ATTY. FOR DBT.
DEBTORS DISMISSED: 11/27/2020

No Ruling

11. [21-20174](#)-A-13 **IN RE: DAVINA CALAVANO**
[MS-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE BANK (USA)
1-21-2021 [[9](#)]

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

12. [18-23478](#)-A-13 **IN RE: TAMMY JACKSON**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-25-2020 [[62](#)]

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

13. [18-23478](#)-A-13 **IN RE: TAMMY JACKSON**
[PGM-4](#)

MOTION TO MODIFY PLAN
1-19-2021 [[118](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

14. [17-23779](#)-A-13 **IN RE: MARIA CRISTINA CRUZ GALLEGOS**
[BLG-2](#)

MOTION TO MODIFY PLAN
1-19-2021 [\[48\]](#)

CHAD JOHNSON/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)

The debtor has the burden of showing ability to comply with terms of the proposed chapter 13 plan and its feasibility under 11 U.S.C. § 1325(a)(6). Here the debtor is delinquent \$770.00. Also, the debtor has a household of four people, but the debtor’s supplemental Schedules I and J, ECF No. 54, adjusts expenses so that food expenses are reduced from \$963.00 to \$500.00, childcare and education costs are reduced from \$400.00 to \$0.00, clothing and laundry costs are reduced from \$150.00 to \$15.00, medical and dental costs are reduced from \$150.00 to \$0.00, transportation costs are reduced from \$450.00 to \$120.00, and entertainment costs are reduced from \$100.00 to \$0.00. The debtor’s budget is not feasible according to national standards for a family of 4. Though not directly applicable to below median income debtors it does provide a guide for determining feasibility. The debtor therefore has not shown feasibility of the plan. The court will deny modification 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 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.

15. [17-23779](#)-A-13 **IN RE: MARIA CRISTINA CRUZ GALLEGOS**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
12-18-2020 [\[42\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

16. [19-21082](#)-A-13 **IN RE: RONDELL DANIEL**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
12-18-2020 [\[95\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

17. [19-21082](#)-A-13 **IN RE: RONDELL DANIEL**
[PGM-2](#)

MOTION TO MODIFY PLAN
1-19-2021 [\[102\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

18. [20-22982](#)-A-13 **IN RE: EDWARD MEDINA**
[DPC-2](#)

MOTION TO DISMISS CASE
1-13-2021 [\[68\]](#)

HARRY ROTH/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).

DELINQUENCY

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$5,939.45. An additional payment of \$3,515.89 will be due before the hearing.

NO PLAN PENDING

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 8 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

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 because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

19. [19-22396](#)-A-13 **IN RE: RUMMY SANDHU**
[PGM-6](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS
ATTORNEY
1-26-2021 [[116](#)]

PETER MACALUSO/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

COMPENSATION AND EXPENSES

In this Chapter 13 case, Peter G. Macaluso has applied for an allowance of compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$1,492.50 and reimbursement of expenses in the amount of \$0.00.

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, "opting in" to the no-look fee approved through plan confirmation, ECF No. 3. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c), ECF No. 103. The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See L.B.R. 2016-1(c).

The court finds that the compensation and expenses sought are reasonable, as the debtor's counsel performed substantial and unanticipated work (i.e. filing a modified plan to extend term of plan to 84 months).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application.

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.

Peter G. Macaluso's application for allowance of compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved. The court allows compensation in the amount of \$1,492.50 and reimbursement of expenses in the amount of \$0.00.