

**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: MARCH 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. [17-20014](#)-A-13 **IN RE: ROBERT ROSS**
[EWV-300](#)

MOTION TO DISMISS CASE
3-3-2021 [\[44\]](#)

ERIC VANDERMEY/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Prepared by the movant

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).

Section 1307(b) of the Bankruptcy Code provides that "[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable." 11 U.S.C. § 1307(b). For the reasons stated in the motion, the court will dismiss this case.

2. [16-20118](#)-A-13 **IN RE: LESTHER GASTELUM AND ALMA SAQUELARES**
[PGM-3](#)

MOTION TO MODIFY PLAN
2-16-2021 [\[160\]](#)

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 response filed

Disposition: Denied

Order: Civil minute order

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

The debtor's recent Schedules I and J, ECF No. 100, were filed on September 19, 2016, and are too stale to provide any reliable evidence of feasibility. 11 U.S.C. § 1325(a)(6).

Moreover, the court will not consider the debtors' late filed Amended Schedules I and J. Amended Schedules I and J, March 16, 2021, ECF No. 169. LBR 3015-1(d) requires that the debtor give 35 days notice of the hearing on a motion to modify the plan. A motion includes all supporting and ancillary documents. LBR 9014-1(d)(1). Feasibility is part of the debtor's prima facie case and is necessary to sustain the burden of proof applicable to confirmation. 11 U.S.C. § 1325(a)(6). Or, put differently, the movant may not augment the record to fill gaps in the prima facie case in the reply or related documents.

The court finds that the debtor has not satisfied this burden of proof. 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.

3. [21-20121](#)-A-13 **IN RE: TIMOTHY/CLARISSA FRIER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-25-2021 [\[20\]](#)

MARK WOLFF/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.

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan be feasible, and that the debtor is able to comply with its terms. Schedule J shows that the debtor Timothy Frier is unemployed, although he has a net monthly income of \$5,073.00, ECF No. 1. The debtors admitted at the First Meeting of the Creditors that Timothy Frier is a real estate agent and is self-employed. He also advised that he is no longer eligible to collect unemployment. The debtors' Profit and Loss statement for January 1 - February 15, 2021 indicates the debtors have a negative business net income (-\$3,623.41). Due to the foregoing evidence, the debtors therefore failed to show feasibility of and ability to pay under a chapter 13 plan. The court will sustain the objection under 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 521

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtors failed to provide the trustee their 2018 tax returns, 6 months of profit and loss statements, 6 months of bank statements for all bank accounts (or written statements that no such documents exist), and statements for their two retirement accounts they mentioned at the First Meeting of the Creditors. The court will sustain the objection under 11 U.S.C. § 521.

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. [17-24928](#)-A-13 **IN RE: DUANE ORSBURN**
[DBL-2](#)

MOTION TO MODIFY PLAN
2-12-2021 [\[45\]](#)

BRUCE DWIGGINS/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 moving party, approved by trustee

Subject: Second Amended Chapter 13 Plan, February 12, 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). 11 U.S.C. § 1325(a)(6) requires that a debtor show feasibility and ability to pay under the proposed chapter 13 plan.

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

5. [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.

No Ruling

6. [20-23434](#)-A-13 **IN RE: TAMARA GEREN**
[PLC-2](#)

MOTION TO CONFIRM PLAN
2-16-2021 [\[54\]](#)

PETER CIANCHETTA/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 creditor

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. § 1325(a) (6)

11 U.S.C. § 1325(a) (6) requires that a chapter 13 plan be feasible, and that the debtor is able to comply with its terms. Also, courts have historically found balloon payments or otherwise that are involved in plan payments as insufficient evidence of the debtor's ability to pay under the plan, as they 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).

U.S. Bank National Association, a Class 2(A) creditor under the debtor's plan, holds Claim No. 3-1 in the secured amount of \$190,283.69 against the debtor's real property 3905 Riviera Lane, Elk Grove, California 95758. The plan's Nonstandard Provisions, ECF No. 57, state: "Debtor will refinance the home and pay the entire balance due on Claim No. 3 in full by the end of the plan. If the Debtor is not able to refinance the home, then the home shall be sold and the claim satisfied through the sale. All Arrears shall be paid in full in one lump sum payment upon closing the refinance. No periodic payments shall be paid on the arrears." The debtor's declaration does not account for the proposed refinance or sale, and there has not been a motion to employ a broker. The lump sum payment and the proposed sale are contingent on speculative events (i.e. closing of refinance or the sale) to take place during the life of the plan. In addition, the debtor's Schedule J indicate a disposable income of \$2,889.33 per month. The debtor would need to apply \$4,048.58 to cure arrears on the creditor's claim by the end of the plan. The court will deny modification of the plan, as the debtor has not demonstrated ability to pay according to 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.

7. [15-22149](#)-A-13 **IN RE: MATTHEW MCKEE**
[PGM-4](#)

MOTION TO MODIFY PLAN
2-16-2021 [\[129\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

8. [18-20051](#)-A-13 **IN RE: RORY MCNEIL**
[MWB-3](#)

MOTION TO MODIFY PLAN
1-26-2021 [\[72\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final 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 be feasible and that the debtor is able to comply with its terms.

Post-petition Mortgage Arrears

The previously confirmed plan and the modified plan provide for treatment of Barbara Robinson 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 Barbara Robinson in the amount of \$10,750.00 for the months of September, November, December 2020 and January, February 2021. The modified plan does not provide a cure for the post-petition arrearage for Barbara Robinson. The debtor therefore has not shown feasibility under the plan.

Plan Payments

Section 5.02(a) of the proposed plan requires that "at a minimum, each monthly plan payment must be sufficient to pay in full ... monthly dividends payable on account of Class 1 arrearage claims, Class 2 claims..." ECF No. 74. The debtor here proposes plan payments of \$112,350.00 total paid by 12-18-20, then \$0.00 in monthly payments until April 2021, then \$3,630.00 per month for the balance of the plan. Where the debtor's modified Plan proposes monthly dividends of \$535.00 to prepetition mortgage arrears and \$600.00 to Class 2 Siskiyou Tax Collector while proposing a \$0.00 plan payment until April 2021, the court will deny modification under Plan § 5.02(a).

Sale of Commercial Property

Section 7.02 of the proposed modified plan states, "The Siskiyou Tax Collector shall be paid \$0 for 5 months and thereafter \$600.00 Monthly until the Allowed Secured Claim is paid in full. Sale of 1301 Main Street Yreka, CA within 48 months will payoff Taxes owed on said property," ECF No. 74. Under the confirmed plan, ECF No. 28, this sale was to have occurred within 18 months. The debtor provided no explanation as to what efforts were made to sell the property within the 18-month timeframe under the confirmed plan or what is being done now to sell within 48 months. The sale of the property is contingent on speculative events. The debtor therefore failed to show ability to pay under the confirmed or proposed plan.

No Supplemental Schedules I and J

The debtor's most recent Schedules I and J, ECF No. 1, reflect a monthly net income of \$3,630.14. However, those schedules were filed on March 6, 2018; the court finds that these schedules do not provide sufficient evidentiary value of the debtor's *current* financial situation (emphasis added). Also, the debtor's declaration, ECF No. 75, states that his delinquency was due to the loss of a tenant, Check n Go, but that he has now leased 2 units to a barber at \$500.00 per month and a hydroponics business at \$750.00 per month (increasing to \$1,000.00 in the fall). The debtor also states he is now receiving \$1,011.00 per month in disability payments. The debtor has not clarified his current financial reality and therefore has not shown whether the plan is feasible or his ability to pay under the plan. The court will deny modification under § 1325(a)(6).

No Commitment Period

The plan does not identify the duration of payments in Section 2.03 and Section 7.03 states payments will continue until the plan is completed, ECF No. 74. While the debtor's declaration indicates his

delinquency stemmed from COVID 19, the debtor does not state whether he is proposing to extend the plan term beyond the 60 months under the confirmed plan as allowed under the CARES Act. The debtor has not made clear the applicable commitment period and therefore hasn't shown ability to comply with 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 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.

9. [20-25356](#)-A-13 **IN RE: CHRISTOPHER FIGUEROA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-3-2021 [[62](#)]

GORDON BONES/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.

10. [15-26959](#)-A-13 **IN RE: PENNY ESAU**
[GC-1](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES
2-4-2021 [\[60\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
DEBTOR DISCHARGED: 01/05/2021

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 610 Stineman Court, Wheatland, CA 95692

Judicial Lien Avoided: \$8,228.36

All Other Liens: \$167,749.39

Exemption: \$70,224.66 (Schedule C)

Value of Property: \$237,974.00

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

11. [19-27461](#)-A-13 **IN RE: RICHARD ACOSTA**
[MOH-6](#)

MOTION TO CONFIRM PLAN
1-6-2021 [\[94\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final 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)(3), (7)

The debtor failed **again** to show that he is proceeding in good faith under 11 U.S.C. §§ 1325(a)(3), (7), as it suffers again from the same inadequacies as the previous five plans that have been filed and continues to fail to resolve the Trustee's previous oppositions to motion to confirm MOH-2, MOH-3, MOH-4, and, MOH-5.

For the fifth time, the debtor refused to address issues raised by the trustee and Creditor Deutsche Bank. These issues include an objection regarding the Debtor's real property interest and transfers as to 3235 and 3237 Dry Creek Road. The debtor's income continues to be speculative as his declaration states, with regards to his income and Deutsche Bank: "I expect to earn \$4,183.00 per month...", (emphasis added), ECF No. 96. If the debtor's income is still so uncertain, after over a year since the filing of this case, then the debtor failed to show feasibility of the plan.

The debtor does not appear able, or willing, to comply with the plan and make the plan payments, 11 U.S.C. §1325(a)(6). The trustee must now object for a fifth time as to the same matters that have not been addressed or resolved from previously filed amended plans. The Fifth Amended Plan, as with the Fourth, Third, Second and First, still lists Specialized Loan Servicing in Class 4. The creditor has not filed an amended proof or claim or given any indication that the debtor is current on this loan. The creditor has filed a Notice of Temporary Forbearance Extension, on December 8, 2020, that defers the debtor's loan for 6 months, starting September 1, 2020. The debtor has not addressed how any additional forbearance arrearage will be addressed or how this affects the plan.

The debtor's declaration, ECF No. 96, as with his previous Declaration, ECF No. 86, states that the debtor has been unable to persuade SLS to amend their claim to show \$0.00 arrears, that his

plan is to work additional hours and send a separate check for \$3,238.06. The debtor failed to provide any additional proof that the payment has been made and confirm there is no delinquency owed to this creditor in order for SLS to remain as a Class 4 creditor.

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

The plan is not feasible under § 1325(a) (6). This fifth amended plan, as with the fourth, third, second and first, still lists Specialized Loan Servicing in Class 4. To date, Specialized Loan Servicing has not filed an amended proof of claim or given any indication that the debtor is current on this loan. The debtor has not provided any proof that there is no delinquency owed to this creditor in order for the creditor to remain in Class 4.

The debtor still did not clarify the addresses of his residence, his rental property, and his property which was destroyed in the Camp Fire. The debtor's prior declaration stated 3237 Dry Creek was a rental. Petition says 3237 is his principal residence. However, the debtor stated in the declaration 3235 is current residence (emphasis added).

The debtor has still not clarified his mortgage expenses identified in his schedules. The debtor has again failed to amend the schedules, including Schedules I and J, so that they accurately reflect the debtor's monthly income and expenses. The debtor's declaration stated he is going to work more and earn a higher income to pay off arrears to Specialized Loan Servicing, ECF No. 86, which indicates that the budget stated in the schedules is inaccurate.

The fifth amended plan still does not identify a monthly payment the debtor's attorney should receive. The Additional Non-Standard Provisions only state that the debtor's attorney's fees are to be paid prior to any mortgage arrearage payments owed to PHH Mortgage or any dividend paid to unsecured creditors, ECF No. 85. The debtor did not make clear what should be paid to the debtor's attorney each month in the event this plan is confirmed.

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.

12. [19-24669](#)-A-13 **IN RE: RAMON CAPARAS**
[AF-6](#)

MOTION TO MODIFY PLAN
1-22-2021 [[105](#)]

ARASTO FARASAD/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.

13. [19-27469](#)-A-13 **IN RE: AARON/JESSICA MEAUX**
[PGM-4](#)

AMENDED MOTION TO MODIFY PLAN
2-18-2021 [[82](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

14. [20-23870](#)-A-13 **IN RE: DARRELL/ELIZABETH KEITH**
[DBL-1](#)

MOTION TO CONFIRM PLAN
2-16-2021 [\[27\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, February 16, 2021

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.

15. [20-23870](#)-A-13 **IN RE: DARRELL/ELIZABETH KEITH**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
2-1-2021 [\[23\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Tentative Ruling

Since the trustee consents to the court dropping the motion to dismiss if the motion to confirm (Item 14) is granted, and since the court granted said motion to confirm, the court will drop this matter from the calendar as moot.

16. [19-26686](#)-A-13 **IN RE: TRACEY TURRUBIATE**
[PGM-1](#)

MOTION TO MODIFY PLAN
2-16-2021 [\[37\]](#)

PETER MACALUSO/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, February 16, 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.

17. [21-20091](#)-A-13 **IN RE: DEBBIE/MICHAEL BARKER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-24-2021 [\[22\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

18. [19-22793](#)-A-13 **IN RE: ROGER/TENILLE JONES**
[PSB-3](#)

MOTION TO MODIFY PLAN
2-16-2021 [\[58\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

19. [19-26686](#)-A-13 **IN RE: TRACEY TURRUBIATE**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
2-3-2021 [\[33\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Since the trustee consents to the court denying this motion to dismiss if the motion to modify is granted, and since the court granted said motion to modify (Item 16), the court will drop this matter from the calendar as moot.