

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: JULY 14, 2020
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. [20-21905](#)-A-13 **IN RE: DIANE MORRIS**
[TLA-2](#)

MOTION TO CONFIRM PLAN
5-29-2020 [[44](#)]

THOMAS AMBERG/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, May 29, 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 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.

2. [20-21306](#)-A-13 **IN RE: FREDDY/CHRISTINA ROMERO**
[JPW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-11-2020 [[24](#)]

DALE ORTHNER/ATTY. FOR DBT.
JACKY WANG/ATTY. FOR MV.
UNITED SHORE FINANCIAL SERVICES, LLC VS.; RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 7409 Windjammer Way, Citrus Heights, CA

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

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

Here, there are two species of cause. First, the claim is provided for by the plan. The trustee's opposition contends that the creditor's claim is provided for in Class 4 of the plan confirmed June 11, 2020. But neither the plan, nor the order confirming, so provide. See Plan § 3.10, March 5, 2020, ECF No. 5; Order, June 11, 2020, ECF No. 30. Second, the debtor has missed 2 post-petition payments totaling \$3,514.98 due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted 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.

United Shore Financial Services, LLC'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 7409 Windjammer Way, Citrus Heights, CA, 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.

3. [19-27109](#)-A-13 **IN RE: CHRISTOPHER WHATLEY AND IRMA GRUIA**
[MMJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-3-2020 [[22](#)]

KRISTY HERNANDEZ/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.
EXETER FINANCE, LLC VS.

No Ruling

4. [20-20814](#)-A-13 **IN RE: PATRICK EASTER AND TINA**
GUEVARA-EASTER
[GC-1](#)

MOTION TO CONFIRM PLAN
5-28-2020 [[37](#)]

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

5. [20-22424](#)-A-13 **IN RE: MOHAMMED TAMIK AND SADRUL NISHA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-24-2020 [[27](#)]

MARK WOLFF/ATTY. FOR DBT.

No Ruling

6. [20-20329](#)-A-13 **IN RE: ARAM PASKEVICHYAN**
[PLC-2](#)

MOTION TO CONFIRM PLAN
6-3-2020 [[50](#)]

PETER CIANCHETTA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

7. [20-22331](#)-A-13 **IN RE: BRANDON/JOVINA LIMOSNERO**
[DPC-1](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-1-2020 [[21](#)]

PAULDEEP BAINS/ATTY. FOR DBT.

No Ruling

8. [20-22238](#)-A-13 **IN RE: JOHN CLARES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-17-2020 [[18](#)]

JEFFREY OGILVIE/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

9. [20-22342](#)-A-13 **IN RE: ERIC SHIU**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-17-2020 [[16](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

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 and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the 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 confirm is denied as moot.

10. [20-22445](#)-A-13 **IN RE: GREG/TERESA REYNOLDS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-24-2020 [[18](#)]

STEPHEN REYNOLDS/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.

Here, there are two problems. First, in § 3.05 of the plan the debtor failed to specify whether counsel shall seek approval of fees under L.B.R. 2016-1(c) or by filing and serving a motion to grant professional fees. The trustee therefore cannot assess feasibility.

Second, the Debtor's plan is also not feasible under § 1325(a)(6). The debtor's disposable income is listed \$241.58 in Schedule J. ECF 1. The plan proposes a monthly payment of \$978.41. ECF 4. The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

11. [19-26151](#)-A-13 **IN RE: CHAD/MARIAN VAITAI**
[MAC-3](#)

MOTION TO CONFIRM PLAN
5-26-2020 [\[60\]](#)

MARC CARASKA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan, conditioned on debtor amending plan according to trustee's objection

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

Disposition: Granted with changes in the order confirming

Order: Prepared by the movant, approved by the trustee

Subject: Third Amended Chapter 13 Plan, May 26, 2020

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, ECF 65.

The trustee noted that the plan, ECF 62, is silent as to the \$1,400.00 prepaid legal insurance, listed on the Disclosure of Compensation, ECF 1.

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan, provided the order confirming clarifies that the debtor's prepaid legal insurance has paid \$1,400.00.

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 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 approved, subject to the amendment requested by the trustee's objection. The court grants confirmation of the chapter 13 plan, provided that the plan is amended as to include the \$1,400.00 pre-paid legal insurance.

12. [17-26052](#)-A-13 **IN RE: TANISHA MAVY**

MOTION TO WAIVE FILING FEE
6-23-2020 [[180](#)]

TANISHA MAVY/ATTY. FOR MV.

No Ruling

13. [20-22460](#)-A-13 **IN RE: ENER/MARIA ELENA GUECO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-24-2020 [\[27\]](#)

JASMIN NGUYEN/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

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 and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the 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 confirm is denied as moot.

14. [20-22460](#)-A-13 **IN RE: ENER/MARIA ELENA GUECO**
[JTN-1](#)

MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
6-1-2020 [\[17\]](#)

JASMIN NGUYEN/ATTY. FOR DBT.
ORDER GRANTING, ECF NO. 41

Final Ruling

The court having issued an order valuing the collateral at \$4,000.00 in accordance with a stipulation of the parties, ECF 41, this matter will be dropped from the calendar as moot.

15. [20-22460](#)-A-13 **IN RE: ENER/MARIA ELENA GUECO**
[RTD-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SCHOOLS FINANCIAL
6-25-2020 [\[33\]](#)

JASMIN NGUYEN/ATTY. FOR DBT.
ROXANNE DANERI/ATTY. FOR MV.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

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 and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the 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 confirm is denied as moot.

16. [18-25264](#)-A-13 **IN RE: JAMES/LORI PERRY**
[PGM-4](#)

MOTION FOR HARDSHIP DISCHARGE AND/OR MOTION TO MODIFY PLAN
6-4-2020 [\[77\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

17. [20-22366](#)-A-13 **IN RE: PHILIP/YVETTE HOLDEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-18-2020 [[15](#)]

MATTHEW GILBERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

18. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-18-2020 [[18](#)]

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

19. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[ML-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY 3RD GENERATION, INC.
6-17-2020 [[15](#)]

MARY TERRANELLA/ATTY. FOR DBT.
DIXON GARDNER/ATTY. FOR MV.

No Ruling

20. [20-22384](#)-A-13 **IN RE: DANNIE BROWN AND LINDA RAMIREZ**
[MMJ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
6-8-2020 [[16](#)]

CANDACE BROOKS/ATTY. FOR DBT.
MARJORIE JOHNSON/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.

The creditor has filed a proof of claim against the debtor for a personal vehicle loan of \$22,242 with an annual interest rate of 12.79%. Claim 7-1. The debt was incurred on December 31, 2019. The court finds the debt was incurred within 910 days pre-petition and has not been modified hitherto. The plan impermissibly values the creditor's interest at \$19,600 and the interest rate at 4.87%. ECF 2. The court will therefore sustain the creditor's objection 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.

Capital One Auto Finance'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.

21. [20-20786](#)-A-13 **IN RE: RONNIE/THERESA BROWN**
[EJS-1](#)

MOTION TO AVOID LIEN OF ZWICKER & ASSOCIATES, PC
6-5-2020 [\[27\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens, and the exemption amount, does not exceed the property's value. That the debtor could have claimed a greater homestead, e.g. \$175,000, is an insufficient basis to grant the motion. Accordingly, a prima facie case has not been made for relief under § 522(f).

22. [20-22292](#)-A-13 **IN RE: WARNER/MINNIE BROWN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-17-2020 [\[15\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

An amended plan (ECF 26) having been filed on June 29, 2020, addressing the trustee's objection, this court will drop this matter from the calendar as moot.

23. [20-20797](#)-A-13 **IN RE: NIDA LACAP**
[PGM-2](#)

MOTION TO CONFIRM PLAN
6-3-2020 [\[44\]](#)

PETER MACALUSO/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, June 3, 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 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.