

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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

DAY: TUESDAY  
DATE: JULY 21, 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. [20-22003](#)-A-13     **IN RE: THOMAS RENOIS**  
[DEF-2](#)

MOTION TO CONFIRM PLAN  
5-6-2020    [[20](#)]

DAVID FOYIL/ATTY. FOR DBT.  
DEBTOR DISMISSED: 07/02/20

### **Final Ruling**

The case having been dismissed, the matter is dropped as moot.

2. [20-22603](#)-A-13     **IN RE: ALAN/SHERRY KENYON**  
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR ROUNDPOINT  
MORTGAGE SERVICING CORPORATION  
7-2-2020    [[19](#)]

BRUCE DWIGGINS/ATTY. FOR DBT.  
CHRISTINA KHIL/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.

Local Rule 3015-1(c) requires the use of this district's form chapter 13 plan. This district's form chapter 13 plan, Form EDC 3-080, requires the debtor to put into Class 1 any delinquent long-term secured debts on the debtor's principal residence that the debtor wishes to keep. Here, the creditor was placed in Class 4, which may only be used for mortgages that were current on the date of the petition. The creditor has also filed a Proof of Claim No. 10-1, which shows arrears due and owing to the creditor in the amount of \$11,735.26. There has been no objection to claim filed. The court presumes the Proof of Claim is valid under 11 U.S.C. § 502(a) and Fed. Rule Bankr. Proc. 3001(f). The debtors should have placed the creditor in Class 1 under the plan. The court will sustain the creditor'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.

Roundpoint Mortgage Servicing Corporation'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.

3. [20-22603](#)-A-13     **IN RE: ALAN/SHERRY KENYON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-1-2020    [\[15\]](#)

BRUCE DWIGGINS/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

### **DEFAULT**

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.

### **DISCUSSION**

A court can confirm a plan if "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 debtors are delinquent in 1 plan payment of \$2,170.00 to the trustee. The debtors were also scheduled to pay \$2,170.00 on July 25, 2020. The debtors have paid \$0.00 into the plan to date. This plan is not feasible under § 1325(a)(6).

The joint debtor did not submit proof of her social security number to the trustee at the 341 meeting as required under Federal Rule of Bankruptcy Procedure 4002(b)(1)(B).

The debtors must file a schedule of assets and liabilities. 11 U.S.C. § 521(a)(1)(B)(i). The debtors' representations in the schedules must be complete and accurate under Federal Rule of Bankruptcy Procedure 9011. At the 341 meeting, the debtors testified they failed to list a 2016 Honda Pioneer in their schedules and plan in accordance with § 521(a)(1). Also, the trustee requested that they amend their schedules and plans to include the vehicle. To date, the debtors have failed to comply with the trustee's request as required under § 521(a)(3).

#### **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. [20-20704](#)-A-13     **IN RE: BRIAN/TRACEE STACY**  
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-5-2020    [[17](#)]

DAVID RITZINGER/ATTY. FOR DBT.  
JENNIFER WONG/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

5. [19-23707](#)-A-13     **IN RE: MICHAEL/CAROLINE PANOPIO**  
[RJ-2](#)

MOTION TO MODIFY PLAN  
6-9-2020    [[81](#)]

RICHARD JARE/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.

### **INSUFFICIENT NOTICE PERIOD**

The debtor did not provide a sufficient period of notice of the hearing on the motion or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 3015(g) requires not less than 21 days' notice of the time fixed for filing objections and the hearing to consider a proposed modification of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 3015(g) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. LBR 3015-1(d). Fed. R. Bankr. P. 2002(a)(9) also requires that the trustee, all creditors and indenture trustees get at least 21 days' notice to file an objection to confirmation.

The debtor's "Supplement", ECF 90, to the debtor's originally filed motion modify, ECF 81, is an entirely new motion to modify plan. The newly filed motion was filed 9 days before the hearing. Creditors and parties in interest received less than 21 days' notice of the time fixed for filing objections, and the motion and notice of hearing were filed and served less than 35 days prior to the hearing. The court will deny the motion to modify plan.

### **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.

6. [20-21919](#)-A-13     **IN RE: DENNIS ROBBINS**  
[MOH-1](#)

MOTION TO CONFIRM PLAN  
6-15-2020    [[29](#)]

MICHAEL HAYS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

7. [20-20329](#)-A-13     **IN RE: ARAM PASKEVICHYAN**  
[PLC-1](#)

OBJECTION TO CLAIM OF DIRECT CAPITAL CORPORATION, CLAIM  
NUMBER 7  
6-1-2020    [[43](#)]

PETER CIANCHETTA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(1); written opposition filed

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

The debtor objects to the allowance of Claim No. 7 filed by the claimant. The court will overrule the objection for the reasons discussed.

**ADVERSARY PROCEEDINGS**

A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding. FRBP 3007(b). Adversary proceedings include proceedings "to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d)." FRBP 7001(2).

Here, the debtor contends the judgment lien claimant's actions were ineffective to create a lien because the debtor had no interest in the property. The debtor thus seeks to adjudicate the validity, priority and/or extent of the lien within the meaning of FRBP 7001(2).

The debtor has improperly sought adjudication on the validity of claimant's lien via claim objection. The objection is overruled.

8. [17-22144](#)-A-13     **IN RE: KIMBERLY MAY**  
[RJ-3](#)

MOTION TO MODIFY PLAN  
6-9-2020    [[62](#)]

RICHARD JARE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

9. [15-21845](#)-A-13     **IN RE: JOSEPH BARNES**  
[SS-14](#)

MOTION TO MODIFY PLAN  
6-16-2020    [[283](#)]

SCOTT SHUMAKER/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 09/22/2016; RESPONSIVE PLEADING

**No Ruling**

10. [17-27445](#)-A-13     **IN RE: BRIAN/WENDY NICKLE**  
[MJD-5](#)

MOTION TO MODIFY PLAN  
6-8-2020    [[77](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.  
NON-OPPOSITION

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by movant, approved by the trustee

**Subject:** Third Amended Chapter 13 Plan, June 8, 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.

11. [20-22562](#)-A-13     **IN RE: RICARDO MEJIA**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-2-2020    [\[16\]](#)

PETER MACALUSO/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**

The plan is not compliant with 11 U.S.C. § 1325(a)(6). The debtor is delinquent \$1,000.00. Also, at the 341 meeting, the debtor admitted he was no longer employed and could not afford the \$1,000.00 monthly payments under his proposed Chapter 13 plan. The debtor indicated on amended Schedule J that this monthly net income is \$625.00. ECF 15. The plan is not feasible under § 1325(a)(6).



## **11 U.S.C. § 1322**

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1). The debtor testified at the 341 meeting he last gambled two days prior to the meeting. That potential income and/or expense was not disclosed in the debtor's schedules or statements. Schedule I, ECF 1. Also, Question 5 of the debtor's Statement of Financial Affairs, ECF 1, does not report any federal or California tax refunds for 2019. The debtor is to receive a refund of \$6,471.00 for the tax year 2019.

## **ATTORNEY FEES**

The court cannot approve the attorney fees under L.B.R. 2016-1. The boxes in Sections 3.05 and 3.06 of the plan indicate the debtor's attorney is accepting \$4,000.00. ECF 3. This appears a non-business case, so under L.B.R. 2016-1(c) the maximum fee that may be charged is \$4,000.00. The Rights and Responsibilities of Chapter 13 Debtors, ECF 4, and Disclosure of Compensation of Attorney for Debtor, ECF 1, both indicate the debtor's attorney agreed to accept \$6,000.00. The trustee is unclear which amount is the correct "opt in" amount for the debtor's attorney fees.

## **EXEMPTIONS**

The debtor exempting equity in a 2016 Hyundai Sonata in Schedule C under California Code of Civil Procedure § 703.140(b)(2) is improper because the debtor is also claiming exemptions under C.C.P. § 704.010. Under California law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure ("special bankruptcy exemptions") or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) ("regular non-bankruptcy exemptions"). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)-(3).

## **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.