

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: SEPTEMBER 15, 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. [20-22701](#)-A-13 **IN RE: EVAN PASTERNAK AND SONJA DURAN**
[CYB-3](#)

CONTINUED MOTION TO VALUE COLLATERAL OF COMMONWEALTH CENTRAL
CREDIT UNION
8-17-2020 [[42](#)]

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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 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).

Here, the debtor does not argue that the collateral is outside the scope of the hanging paragraph. Instead, the debtor argues that only a portion of the respondent's claim, secured by the subject collateral is unprotected by the hanging paragraph because it

resulted from financing for the negative-equity portion of the vehicle traded in at the time of the debtor's purchase of the present collateral.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the 'negative equity' of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the portion of an automobile lender's claim attributable to negative-equity financing is not secured by a purchase money security interest (PMSI). Thus, negative-equity debt is not protected by the hanging paragraph.

The court adopts the pro-rata approach supported by the cases: the percentage of the original principal balance of the debt secured by a PMSI is multiplied by the present balance of the debt owed to respondent on its claim. The product is the amount of the respondent's present claim that is secured by a PMSI (the "PMSI portion") and protected by the hanging paragraph of § 1325(a). The negative-equity portion of the claim may be treated as unsecured so long as the value of the collateral does not support it.

The original principal balance of the debt was \$26,737.95. The portion of the original principal balance secured by a PMSI was \$22,987.95. So, 85.98% of the original principal balance was secured by a PMSI.

Multiplying this percentage by the respondent's present claim of \$20,197.90 equals \$17,366.16. This amount is the PMSI portion of the claim that cannot be stripped down. The negative-equity portion of the respondent's claim is not protected by the hanging paragraph, and, as a result, may be treated as an unsecured claim if it is uncollateralized.

The vehicle's value is less than the PMSI-portion of the respondent's claim. And the entire PMSI portion of respondent's claim is protected by the hanging paragraph. The entire non-PMSI portion of this claim (negative-equity financing) is unsupported by the collateral's value. The respondent has a secured claim equal to \$17,366.16 (the PMSI portion) and an unsecured claim for the balance of its claim.

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 2017 Jeep Renegade has a value of \$17,366.16. The respondent has a secured claim in the amount of \$17,366.16 equal to the portion of the claim secured by a purchase money security interest. The respondent has a general unsecured claim for the balance of the claim.

2. [20-22701](#)-A-13 **IN RE: EVAN PASTERNAK AND SONJA DURAN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-16-2020 [[30](#)]

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling.

Chapter 13 trustee David Cusick has signaled his support of confirmation, provided the debtor prevails on its motion to value the 2017 Jeep Renegade. Motion to Value, August 17, 2020, ECF No. 42. Since the debtor has done so, the court will overrule the trustee's objection and will issue a civil minute order.

3. [20-23705](#)-A-13 **IN RE: JO WILSON**
[ALG-2](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR
LAKEVIEW SERVICING LLC
8-26-2020 [[20](#)]

MUOI CHEA/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

4. [19-23707](#)-A-13 **IN RE: MICHAEL/CAROLINE PANOPIO**
[RJ-3](#)

MOTION TO MODIFY PLAN
7-24-2020 [[100](#)]

RICHARD JARE/ATTY. FOR DBT.
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: Second Amended Chapter 13 Plan, June 9, 2020

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.

5. [20-23407](#)-A-13 **IN RE: KUN BERNARDINO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-19-2020 [[20](#)]

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

6. [20-23308](#)-A-13 **IN RE: MARIA AGUIRRE**
[DPC-1](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-1-2020 [\[17\]](#)

LEROY AUSTIN/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The trustee cannot confer whether the plan is feasible under § 1325(a)(6). The debtor is below median income. The debtor did not identify any gross income for the last six months on Form 122C-1, Question #2, and lists no total income for the 60 days prior to filing on Question #11; the Statement of Financial Affairs shows \$12,000 year to date; Schedule I shows \$2,418 in gross income per month. ECF 11.

The plan may not comply with § 1325(a)(1). The plan treats creditor USDA as a Class 1 claim but calls for \$0 arrears and a \$0.00 post-petition monthly payment. Class 1 by its terms is for all delinquent secured claims that mature after the completion of the plan. If the claim has a \$0 contract payment, it is not clear how this claim is delinquent. Non-delinquent secured claims that mature after the completion of the plan are placed in Class 4.

Also, the plan treats creditor Golden 1 Credit Union as a Class 4. This case was filed July 1, 2020 and has a 36-month plan, so the last payment due under the Plan would be July 25, 2023. A claim has been filed by the Creditor and it reveals the debt mature January 22, 2023. Claim 2-1. The plan is in error placing this creditor in Class 4, as the claim does not mature after completion of the plan.

CIVIL MINUTE ORDER

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

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

The 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.

7. [20-23408](#)-A-13 **IN RE: JACQUELINE PEIFER**
[FF-1](#)

MOTION TO CONFIRM PLAN
7-29-2020 [[14](#)]

GARY FRALEY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that the trustee, the U.S. Trustee, the attorney for MUFG Union Bank, N.A., and S.B.S. Lien Services did not received notice. ECF 19.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

8. [20-23410](#)-A-13 **IN RE: JEFFREY MCCLAIN**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HARLEY-DAVIDSON CREDIT
CORP.
8-17-2020 [[12](#)]

JULIUS CHERRY/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
WITHDRAWN BY M.P.

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

9. [19-24412](#)-A-13 **IN RE: KIT/JUDY WHITE**
[MRL-2](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT,
WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, AS TO JOINT
DEBTOR
8-3-2020 [[37](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
NON-OPPOSITION

Tentative Ruling

Motion: Substitution of Representative, Continued Administration,
Waiver of Personal Financial Management and Waiver of Certifications
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

Kit Gerald White prays appointment of a personal representative,
substitution of the representative, continued administration, waiver
of the post-petition education requirement and the § 1328
certification for his now deceased spouse Judy Ellen White.

DEFAULT

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).

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a
Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been
closed, a **Notice of Death of the debtor [Fed. R. Civ. P.
25(a), Fed. R. Bankr. P. 7025]** shall be filed within
**sixty (60) days of the death of a debtor by the counsel
for the deceased debtor or the person who intends to be
appointed as the representative for or successor to a
deceased debtor.** The Notice of Death shall be served on
the trustee, U.S. Trustee, and all other parties in
interest. **A copy of the death certificate (redacted as
appropriate) shall be filed as an exhibit to the Notice
of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Here, Judge White died October 11, 2019. Debtor Kit White did not file the death certificate until August 3, 2020, some 10 months after her death. And while this court could find the motion untimely, in the absence of opposition the court will not do so.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

Here, Judy White's death certificate was filed August 3, 2020. This motion was made contemporaneously with the filing of the death certificate and relief is warranted.

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered, and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If a reorganization, family farmer's debt adjustment, or individual's**

debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Fed. R. Bankr. P. 1016 (emphasis added).

Kit White is now more than 12 months into a 60-month plan. The plan will save the debtor's residence and will pay unsecured creditors not less than 9.5%. Continued administration is in the best interests of all concerned.

Waiver of Post-Petition Education Requirement

In most cases, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless... after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.** For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **"disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

11 U.S.C.A. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4).

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning

compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1

CIVIL MINUTE ORDER

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

Kit White's motion has been presented to the court. Having entered the default of the respondents and having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted; and

IT IS FURTHER ORDERED that (1) Kit White is the representative of Judy White and is substituted in her place and stead; (2) continued administration is appropriate; (3) as to Judy White the post-petition education requirement is waived, 11 U.S.C. s 109(h); and (4) as to Judy White the certifications required by 11 U.S.C. § 1328 are waived.

10. [20-23516](#)-A-13 **IN RE: BRITTEN/ERICA SMITH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-26-2020 [[22](#)]

MATTHEW GILBERT/ATTY. FOR DBT.

No Ruling

11. [20-23516](#)-A-13 **IN RE: BRITTEN/ERICA SMITH**
[MG-1](#)

MOTION TO VALUE COLLATERAL OF PATELCO CREDIT UNION
7-30-2020 [[11](#)]

MATTHEW GILBERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral
Disposition: Denied without prejudice
Order: Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf Patelco Credit Union.

12. [19-21827](#)-A-13 **IN RE: SEDALIA MCFADDEN**
[WLG-2](#)

MOTION TO MODIFY PLAN
8-4-2020 [[49](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

13. [20-23827](#)-A-13 **IN RE: STERLING OWENS**
[GEL-1](#)

MOTION TO VALUE COLLATERAL OF ALLY BANK
8-12-2020 [[9](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

14. [20-23230](#)-A-13 **IN RE: WARNER/KATHERINE WINN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-19-2020 [[16](#)]

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

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 list of documents that a chapter 13 debtor must surrender to the trustee includes a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1). The debtor Warner Winn failed to bring proof of his social security number to the Meeting of Creditors on August 13, 2020. He is to bring proof of his social security number at the continued meeting, September 17, 2020 at 11 a.m.

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.

15. [20-23434](#)-A-13 IN RE: TAMARA GEREN
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-26-2020 [[19](#)]

PETER CIANCHETTA/ATTY. FOR DBT.

Final Ruling

The trustee having withdrawn his objection to confirmation, ECF 27, the court will drop this matter from the calendar as moot.

16. [20-23434](#)-A-13 IN RE: TAMARA GEREN
[RPZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
8-27-2020 [[23](#)]

PETER CIANCHETTA/ATTY. FOR DBT.
ROBERT ZAHRADKA/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.

SECTIONS 1325(a)(5)(b)(ii) AND 1322(c)(2)

U.S. Bank National Association's objection to confirmation is made on grounds that the plan incorrectly classifies its secured claim. The court takes judicial notice of the debtor's chapter 13 plan and its contents, which appear on its docket. Fed. R. Evid. 201(b)(2). The plan places the secured creditor's claim in Class 1, yet the claim matures during the life of the debtor's plan.

Given that this creditor has filed a proof of claim, Claim 3-1, its claim is deemed allowed until a party in interest objects. 11 U.S.C. § 502(a). As a result, the claim is delinquent based on prepetition arrearage set forth on the filed proof of claim.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

For Class 2 claims secured by Debtor's principal residence, "Except as permitted by 11 U.S.C. § 1322(c), Debtor is prohibited from modifying the rights of a holder of a claim secured only by Debtor's principal residence." EDC 3-080. § 1322(c)(2) holds that "in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to § 1325(a)(5)."

The creditor's total secured claim is on the debtor's principal residence and is in the amount of \$190,283.69. The debtor placed the creditor in Class 1, designated for delinquent mortgages whose maturity date is after completion of the plan. However, the allowed secured claim will mature on April 1, 2024 - during the life of the debtor's bankruptcy proceeding. Claim 3-1. Therefore, the creditor's claim is subject to § 1322(c)(2). The debtor must modify treatment of the creditor's claim so that the claim gets paid in full over the course of the sixty-month plan. Considering §§ 1322(c)(2) and 1325(a)(5)(B)(ii) together, the creditor's claim should be placed in Class 2, and must be paid in full through the Chapter 13 Plan at an appropriate interest rate.

SECTION 1325(a)(6)

§ 1325(a)(6) requires the debtor's plan to be feasible. When § 1322(c)(2) is operative (as is here), the debtor must retire the entire claim within the life of the plan. The creditor's total secured claim is on the debtor's principal residence and is in the amount of \$190,283.69. The debtor will be required to apply \$3,171.40 towards the creditor's claim alone (provided it is accounted for in Class 2) in order to cure the total secured claim over the proposed sixty-month plan. Amended Schedule J indicates that the Debtor has a disposable income of \$2,889.33 per month when not accounting for the ongoing mortgage payment and approximately \$1,532.89 if accounting for the payment. ECF 18. The debtor has not shown this plan would be feasible.

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.

U.S. Bank National Association'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.

17. [18-28035](#)-A-13 **IN RE: BRUCE/MARIA NORTON**
[MB-1](#)

MOTION TO APPROVE LOAN MODIFICATION
8-7-2020 [[32](#)]

MICHAEL BENAVIDES/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to October 6, at 9:00 a.m. Not later than September 22, 2020, the debtors will file amended Schedules I and J. LBR 3015-1(h)(C). Unless they do so, this motion will be denied without further notice or hearing. Not later than September 29, 2020, the trustee will file a further statement of position with respect to this motion. The court will issue a civil minute order.

18. [20-20939](#)-A-13 **IN RE: ANDREW HUNLEY**
[TJW-1](#)

MOTION TO CONFIRM PLAN
7-22-2020 [[43](#)]

TIMOTHY WALSH/ATTY. FOR DBT.
DEBTOR DISMISSED: 8/19/20

Final Ruling

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

19. [20-23441](#)-A-13 **IN RE: JEFFREY MAYHEW**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-24-2020 [[23](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

20. [20-23446](#)-A-13 **IN RE: THOMAS WALTON**
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-25-2020 [[16](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

21. [19-20048](#)-A-13 **IN RE: THOMAS HARDER**
[BLG-2](#)

MOTION TO MODIFY PLAN
7-29-2020 [[27](#)]

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

22. [20-23262](#)-A-13 **IN RE: HOMER DOTSON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-19-2020 [[22](#)]

CARL GUSTAFSON/ATTY. FOR DBT.

No Ruling

23. [20-23262](#)-A-13 **IN RE: HOMER DOTSON**
[SW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
8-26-2020 [\[28\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.
ADAM BARASCH/ATTY. FOR MV.

No Ruling

24. [16-20763](#)-A-13 **IN RE: LAWRENCE/CHYANNE MICALLEF**
[WW-7](#)

CONTINUED MOTION TO MODIFY PLAN
6-23-2020 [\[155\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); non-opposition filed

Disposition: Granted with modifications stipulated by debtors and trustee

Order: Prepared by movant, approved by the trustee

Subject: Fifth Amended Chapter 13 Plan, June 23, 2020

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 debtors and the trustee have stipulated that the plan will be confirmed upon receipt of the August 25, 2020 payment and with the following changes to the treatment of the post-petition arrears owed to Class 1 creditor Wells Fargo Bank: i) the creditor will be placed

in Class 2; ii) the first post-petition arrears in the original amount of \$3,797.47 will be paid with 0.00% interest and a monthly payment of \$119.00; ii) the second post-petition arrears in the original amount of \$11,134.86 will be paid with 0.00% interest and a monthly payment of \$245.00; iii) the third post-petition arrears (inclusive of forbearance payments) in the amount of \$16,729.40 will be paid with 0.00% interest and a monthly payment of \$522.80. Status Report, ECF 174.

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modifications stipulated by the debtors and the trustee.

25. [19-26163](#)-A-13 **IN RE: JOSE PADILLA CARDONA AND VANESSA PADILLA**
[PSB-1](#)

MOTION TO MODIFY PLAN
8-7-2020 [[21](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

26. [20-23367](#)-A-13 **IN RE: RICHARD GOLDMAN**
[EJS-1](#)

MOTION TO AVOID LIEN OF JOHN DEERE FINANCIAL, FSB
8-14-2020 [[22](#)]

ERIC SCHWAB/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

Subject Property: 92 Ramon Drive, Galt, CA 95632

Judicial Lien: \$84,396.66

1st Deed of Trust: \$82,182.00

2nd Deed of Trust: \$43,935.00

Exemption: \$171,278.00

Value: \$383,206.00

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 is \$381,791.66. This amount does not exceed the property's value, i.e., \$383,206.00. Accordingly, a prima facie case has not been made for relief under § 522(f).

27. [19-20771](#)-A-13 **IN RE: MARTIN HERNANDEZ**
[MWB-3](#)

MOTION TO MODIFY PLAN
7-30-2020 [\[78\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modification of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rules of Bankruptcy Procedure 3015(g). The certificate of service shows that Capital One Bank (USA), N.A., Capital One, N.A., DOJ - Division of Child Support, Department Stores National Bank c/o Quantum3 Group, LLC, U.S. Bank National Association, and the attorney for Cenlar FSB have not received notice.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

28. [20-23473](#)-A-13 **IN RE: TRAVIS/TINA SAHR**
[MOH-1](#)

CONTINUED MOTION TO COMPEL ABANDONMENT
8-3-2020 [[25](#)]

MICHAEL HAYS/ATTY. FOR DBT.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted only as to the business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Property Description: HoneyTree Family Childcare and Preschool license, Item 27, Schedule A/B; HoneyTree Family Childcare and Preschool equipment, Item 40, Schedule A/B; HoneyTree Family Childcare and Preschool goodwill, Item 44, Schedule A/B.

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).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The assets described above are either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such assets is warranted. The order will compel abandonment of only the assets that are described in the motion.

29. [19-27574](#)-A-13 **IN RE: RYAN SAHADEO**
[DPC-3](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
8-26-2020 [\[75\]](#)

W. SHUMWAY/ATTY. FOR DBT.
DEBTOR DISMISSED: 9/1/20

Final Ruling

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

30. [20-20786](#)-A-13 **IN RE: RONNIE/THERESA BROWN**
[EJS-2](#)

MOTION TO AVOID LIEN OF ZWICKER & ASSOCIATES, PC
8-10-2020 [\[46\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service for Zwicker & Associates, PC.

31. [20-21689](#)-A-13 **IN RE: ROSEMARIE HIGGS-SILER**
[DWE-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-20-2020 [[63](#)]

PETER MACALUSO/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
NATIONSTAR MORTGAGE LLC VS.; RESPONSIVE PLEADING

No Ruling

32. [20-20091](#)-A-13 **IN RE: KENNETH FALJEAN**
[GEL-2](#)

MOTION TO MODIFY PLAN
8-7-2020 [[30](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

33. [20-22794](#)-A-13 **IN RE: WILLIAM LOPEZ AND GEIZOL VILANOVA**
[BLG-1](#)

MOTION FOR COMPENSATION FOR CHAD M. JOHNSON, DEBTORS
ATTORNEY(S)
8-11-2020 [[30](#)]

CHAD JOHNSON/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Chad M. Johnson has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,975.95 and reimbursement of expenses in the amount of \$0.00.

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 on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Chad M. Johnson's application for allowance of interim 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 on an interim basis. The court allows interim compensation in the amount of \$3,975.95 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$3,975.95. As of the date of the application, the applicant held a retainer in the amount of \$900.00. The amount of \$3,412.95 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

34. [19-22396](#)-A-13 **IN RE: RUMMY SANDHU**
[PGM-5](#)

MOTION TO MODIFY PLAN
7-30-2020 [[98](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling