

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: NOVEMBER 3, 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. [19-23101](#)-A-13 **IN RE: VIRGINIA GARLINGHOUSE**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
8-21-2020 [[41](#)]

RICHARD JARE/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

2. [19-23101](#)-A-13 **IN RE: VIRGINIA GARLINGHOUSE**
[RJ-2](#)

MOTION TO MODIFY PLAN
9-22-2020 [[47](#)]

RICHARD JARE/ATTY. FOR DBT.

No Ruling

3. [18-22405](#)-A-13 **IN RE: GEORGE/TRISHA VAUGHN**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-25-2020 [[96](#)]

RICHARD JARE/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

4. [18-22405](#)-A-13 **IN RE: GEORGE/TRISHA VAUGHN**
[RJ-4](#)

MOTION TO MODIFY PLAN
9-22-2020 [[102](#)]

RICHARD JARE/ATTY. FOR DBT.

No Ruling

5. [16-22507](#)-A-13 **IN RE: MARK/CAROL RHYNE**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-25-2020 [[100](#)]

PETER MACALUSO/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
WELLS FARGO BANK, N.A. VS.; RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 119 3rd Avenue Southeast, Hickory, North Carolina 28602

The creditor Wells Fargo Bank, N.A. moves for stay relief under 11 U.S.C. § 362(d)(1), stating that the debtors have defaulted on a loan and 35 post-petition payments totaling \$6,112.01 are past due to the creditor. The trustee does not oppose the creditor's motion, stating the debtors did not provide for the creditor in their plan, ECF 60. The debtors oppose the motion, stating the property is up for sale to a buyer for \$60,000.00, ECF 114.

FACTS AND PROCEDURE

The debtor's estate executed and delivered a promissory note and deed of trust securing payment of the note to Amresco Residential Mortgage Corporation in 1998, Exhibit 1-2, ECF 103. The deed of trust secured interest in the debtors' subject property described above. Some years later, the loan was transferred to the movant Wells Fargo Bank, N.A, Exhibit 3, ECF 103.

The debtors later filed for chapter 13 bankruptcy. Throughout the bankruptcy, the debtors did not list Wells Fargo Bank, N.A. in their schedules or in their chapter 13 plan. The terms of the note and deed of trust have been in post-petition default since October 1, 2017.

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. Section 362(d)(1) authorizes stay relief for cause when the debtor defaults on the loan. 11 U.S.C. § 362(d)(1). The debtor has defaulted on a loan from the moving party secured by the property described above, and 35 postpetition payments totaling \$6,112.01 are past due.

In addition, the "failure to provide for a secured claim in one of the classes may be cause to terminate the automatic stay." EDC 3-080, § 2.12. The plan does not provide for the moving party's secured claim. ECF 60. The debtor's opposition to stay relief does

not deny that the debtors failed to account for the creditor in their plan or in their schedules. ECF 114-115. Cause exists to grant relief from stay 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.

RECYCLED DCN

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. The same docket control number RAS-1 was used for a previously filed Motion for Relief from Stay, ECF 73. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

CIVIL MINUTE ORDER

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

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

Wells Fargo Bank, N.A.'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 119 3rd Avenue Southeast, Hickory, North Carolina 28602, 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.

6. [20-23407](#)-A-13 **IN RE: KUN BERNARDINO**
[DPC-1](#)

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

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the trustee requested that the objection to confirmation be overruled, ECF No. 36, the court will drop this matter from the calendar as moot. The court will issue a civil minute order.

7. [20-23908](#)-A-13 **IN RE: COLE RUMFORD**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-7-2020 [[14](#)]

MARK BRIDEN/ATTY. FOR DBT.

No Ruling

8. [19-20511](#)-A-13 **IN RE: JON/HEATHER CARROLL**
[GEL-1](#)

MOTION TO MODIFY PLAN
9-23-2020 [[33](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

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, September 23, 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.

9. [20-24713](#)-A-13 **IN RE: BONITA BROOKS**
[MET-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-14-2020 [\[8\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

10. [20-20814](#)-A-13 **IN RE: PATRICK EASTER AND TINA**
GUEVARA-EASTER
[GC-3](#)

MOTION TO CONFIRM PLAN
9-21-2020 [\[77\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Third Amended Chapter 13 Plan, September 20, 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.

11. [16-20020](#)-A-13 **IN RE: OMAR KIRBY**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
8-21-2020 [[45](#)]

SUSAN TERRADO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

12. [16-20020](#)-A-13 **IN RE: OMAR KIRBY**
[SBT-2](#)

AMENDED MOTION TO MODIFY PLAN
9-29-2020 [[61](#)]

SUSAN TERRADO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

13. [20-24222](#)-A-13 **IN RE: JOHN/JUANITA BABBIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-6-2020 [[15](#)]

MICHAEL BENAVIDES/ATTY. FOR DBT.
10/7/20 FINAL INSTALLMENT PAID \$310

Final Ruling

The final installment having been paid, the order to show cause is discharged. The case will remain pending.

14. [20-24225](#)-A-13 **IN RE: LONNIE CURREY AND ROSELYN**
BRANT-CURREY
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-15-2020 [\[17\]](#)

PATRICIA WILSON/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

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. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled 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 objection to confirmation is overruled as moot.

15. [18-20627](#)-A-13 **IN RE: ANNE HARPER**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-25-2020 [\[49\]](#)

JOSEPH CANNING/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

16. [18-20627](#)-A-13 **IN RE: ANNE HARPER**
[JMC-1](#)

MOTION TO MODIFY PLAN
9-23-2020 [\[56\]](#)

JOSEPH CANNING/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

17. [20-23132](#)-A-13 **IN RE: JEFFREY COATES**
[FF-1](#)

MOTION TO CONFIRM PLAN
9-21-2020 [\[33\]](#)

GARY FRALEY/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, September 21, 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.

18. [20-23832](#)-A-13 **IN RE: APRIL STEVENS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
9-22-2020 [\[15\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the trustee consents to the court overruling the objection to confirmation if the court grants the debtor's Motion to Value Collateral (Item 19), and since the court granted said Motion to Value Collateral, the court will drop this item from the calendar as moot. The court will issue a civil minute order.

19. [20-23832](#)-A-13 **IN RE: APRIL STEVENS**
[PGM-1](#)

MOTION TO VALUE COLLATERAL OF EXETER FINANCE LLC
9-24-2020 [\[19\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2010 Nissan Altima. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$2,700.00.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2010 Nissan Altima has a value of \$2,700.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2,700.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

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

MOTION TO CONFIRM PLAN
9-16-2020 [\[33\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

21. [20-22937](#)-A-13 **IN RE: ROBERT LOYA AND JULIE MCLAIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-13-2020 [[42](#)]

PETER MACALUSO/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.

22. [20-24137](#)-A-13 **IN RE: DAVID/JENNIFER NEAL**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-8-2020 [[17](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

23. [20-22938](#)-A-13 **IN RE: ADRIANNE MIMS**
[EMB-1](#)

MOTION TO CONFIRM PLAN
9-24-2020 [[27](#)]

ERIC BOEING/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

24. [20-23839](#)-A-13 **IN RE: NICOLE PRESTON**
[DPC-1](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-8-2020 [\[26\]](#)

MARK BRIDEN/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 debtor did not appear at the 341 meeting of creditors or at the continued meeting of the creditors. 11 U.S.C. § 341, 343.

The plan is not feasible under § 1325(a)(6). The debtor's Schedule I currently shows \$979 from social security, \$300 from craft sales, and a \$1,145.00 contribution from grandson Dillion Preston. No declaration explains the craft sales, and the debtor has not filed a declaration from the grandson.

The plan does not meet the liquidation test of § 1325(a)(4). The debtor transferred a joint tenancy interest to his grandson in real property in exchange for "contribution to past/present chapter 13 payments." ECF 1. The debtor values the property at \$80,000.00, but the trustee is uncertain if this is based on entire property or only the debtor's remaining interest.

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.

25. [19-23343](#)-A-13 **IN RE: CHERYL SPRAGUE**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-21-2020 [[58](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

26. [18-27246](#)-A-13 **IN RE: WANDA MOORE**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
8-25-2020 [[103](#)]

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

No Ruling

27. [18-27246](#)-A-13 **IN RE: WANDA MOORE**
[PGM-3](#)

MOTION TO MODIFY PLAN
9-25-2020 [[111](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

28. [20-23446](#)-A-13 **IN RE: THOMAS WALTON**
[DPC-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-25-2020 [[20](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Civil minute order

The debtor has claimed exemptions in personal property in the total amount of \$100,322.23 under Washington law. ECF 15. The trustee filed a timely objection to the debtor's claim of exemptions, citing § 522(b)(3)(A), ECF 20. The court will sustain the trustee's objection for the following reasons.

11 U.S.C. § 522(b)(3)(A)

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d).

Exempted property may include "any property that is exempt state or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place." 11 U.S.C. § 522(b)(3)(A).

Here, the debtor claims he lived in Washington for 30 years until January 2020, after which the debtor moved to Florida and then to California on March 2020. ECF 27. The court deduces that the debtor was domiciled in Washington for 180 days immediately preceding 730 days pre-petition. Therefore, the court will apply Washington state law on exemptions pursuant to 11 U.S.C. § 522(b)(3)(A).

BURDEN OF PROOF

The Ninth Circuit has held that, in accordance with FRBP 4003(c), the objecting party bears the burden of proving an exemption is not properly claimed. *In re Carter*, 182 F3d 1027, 1029, n.3 (9th Circ. 1999). However, the Supreme Court has determined the burden of proof is substantive, not procedural; as such, the burden of proof should be borne by the same party who would bear the burden outside bankruptcy (i.e., the debtor). *Raleigh v. Illinois Dept. of Revenue* 530 U.S. 15, 20-21 (2000); see also *In re Pashenee*, 531 B.R.

at 835 (Bankr. E.D. Cal. 2015); *In re Diaz*, 547 B.R. 329 (9th Cir. B.A.P. 2016)

Washington law holds that in contested matters regarding claims of exemptions, "the defendant bears the burden of proving any claimed exemption, including the obligation to provide sufficient documentation to identify the source and amount of any claimed exempt funds." Wash. Rev. Code § 6.27.160(2).

The court holds that under Washington law, the debtor bears the burden of proving the validity of his claimed exemptions.

WASH. REVISED STATUTES

Washington law on exemptions states that "Nothing in this chapter shall be construed to exempt personal property of a nonresident of this state who has left or of an individual who is about to leave this state with the intention to defraud his or her creditors." Washington Revised Statutes 6.15.050(6); *Churchhill v. Miller*, 156 P.851 (Wash. 1916). In addition, the Washington State Supreme Court, (*In re Wieber*, 347 P. 3d 41, fn. 22 - Wash: Supreme Court 2015), noted that the general provisions of Title 6 RCW limited the application of exemptions to courts in Washington.

The debtor filed an amended Schedule C, ECF 15. The court construes that the debtor intends the court to consider only the amended schedule and not the originally filed Schedule C, ECF 1. In the amended Schedule C, the debtor has claimed exemptions of \$100,322.23 on personal property under Wash. Rev. Code § 6.15.010(1) and § 48.18.400. ECF 15. The debtor was not a resident of Washington at the time of filing, ECF 1, ECF 38. As a nonresident of Washington at the time of filing, the debtor cannot claim exemptions under Washington law. Washington Revised Statutes 6.15.050(6); *Churchhill v. Miller*, 156 P.851 (Wash. 1916). For the foregoing reasons, the court will sustain the trustee'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.

The trustee's objection to claim of exemptions has been presented to the court. Having considered the objection, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained.

29. [20-23446](#)-A-13 **IN RE: THOMAS WALTON**
[DPC-2](#)

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

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

30. [20-24652](#)-A-13 **IN RE: LILLIE BRACY**
[BLG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-20-2020 [[12](#)]

CHAD JOHNSON/ATTY. FOR DBT.

No Ruling

31. [20-23859](#)-A-13 **IN RE: KYLIE AGOSTA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-13-2020 [[61](#)]

STEELE LANPHIER/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.

32. [20-24263](#)-A-13 **IN RE: RIZZALINA MIKAELA TODD**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-14-2020 [\[23\]](#)

MARY TERRANELLA/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 plan is not feasible under § 1325(a)(6). The proposed plan payments are \$690.00 for 60 months. Schedule J states the debtor's monthly net income is negative \$225.00. The debtor does not have funds to pay the proposed plan payments under Schedule J.

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.

33. [20-24065](#)-A-13 **IN RE: KAREN KNECHT**
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TIMES SQUARE REVOLVING
TRUST
10-15-2020 [[17](#)]

HELGA WHITE/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.

No Ruling

34. [20-24667](#)-A-13 **IN RE: WENDY SILVA**
[RWH-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-17-2020 [[15](#)]

RONALD HOLLAND/ATTY. FOR DBT.

No Ruling

35. [18-23478](#)-A-13 **IN RE: TAMMY JACKSON**
[DPC-2](#)

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

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

No Ruling

36. [18-23478](#)-A-13 **IN RE: TAMMY JACKSON**
[PGM-2](#)

MOTION TO MODIFY PLAN
9-24-2020 [[69](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

37. [20-24085](#)-A-13 **IN RE: GENE FELTS-BOREN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-8-2020 [\[20\]](#)

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.

The plan is not feasible under § 1325(a)(6). Schedule A/B has several unlisted assets. Question 6 (household goods) and 7 (electronics) state "See attached list." No lists were attached. No. 17 (bank accounts) are lumped together, and No. 33 (claims against third parties) identifies support payments of \$750.00 for 42 months from a former spouse. The debtor owns 2 businesses; no business assets were listed. The trustee reviewed the 2019 IRS returns that were provided by the debtor, which indicates that the debtor received additional income of \$5,325.00 as a refund from the IRS. Schedule I and the Statement of Financial Affairs do not identify this refund. ECF 1.

The debtor has not provided 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such document exists. The debtor is required to do so under 11 U.S.C. § 521(e)(2)(A). The debtor also has not provided proof of her social security number at the meeting of the creditors or at the continued meeting of creditors, 11 U.S.C. § 521(a)(3); FRBP 4002(b)(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.

38. [20-24586](#)-A-13 **IN RE: LAKESHA WYRICK**
[KH-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
10-2-2020 [[10](#)]

KEVIN HARRIS/ATTY. FOR MV.
ONE PATH INVESTMENTS, LLC VS.; RESPONSIVE PLEADING

No Ruling

39. [20-23991](#)-A-13 **IN RE: VINCENT/NORMA CAMPISI**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-8-2020 [[17](#)]

STEELE LANPHIER/ATTY. FOR DBT.

No Ruling

40. [20-20797](#)-A-13 **IN RE: NIDA LACAP**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
8-25-2020 [[59](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the trustee consents to the court dropping this motion if the court grants the debtor's motion to confirm plan (Item 41), and since the court granted said motion to confirm plan, the court will drop this matter from the calendar as moot.

41. [20-20797](#)-A-13 **IN RE: NIDA LACAP**
[PGM-3](#)

MOTION TO MODIFY PLAN
9-25-2020 [\[66\]](#)

PETER MACALUSO/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, September 25, 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.