

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 10, 2020 at 11:30 a.m.

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| 1. | <u>15-29541</u>-E-12 <u>WW</u>-14 | TIMOTHY WILSON Mark Wolff | MOTION TO MODIFY CHAPTER 12 PLAN 10-14-20 [193] |
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 14, 2020. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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| The Motion to Confirm the Modified Plan is granted. |
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11 U.S.C. § 1229 permits a debtor to modify a plan after confirmation. The debtor, Timothy C. Wilson ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has

been filed by the Chapter 12 Trustee, Michael Meyer ("Trustee"), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1222, 1225(a), and 1229 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Timothy C. Wilson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 12 Plan filed on October 14, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 12 Plan, transmit the proposed order to the Chapter 12 Trustee, Michael Meyer ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

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| 2. | <u>15-29541</u> -E-12 <u>MHM</u> -2 | TIMOTHY WILSON Mark Wolff | CONTINUED MOTION TO DISMISS CASE 9-4-20 [185] |
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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| <p>The Motion to Dismiss is denied without prejudice.</p> |
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The Chapter 12 Trustee, Michael Meyer ("Trustee"), seeks dismissal of the case pursuant to 11 U.S.C. § 1208(c)(6) on the basis that Debtor is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 30, 2020. Dckt. 189. Debtor states that the delinquency occurred due to COVID-19 and the current wildfires plaguing Northern California. Debtor also informs the court that despite the delays, Debtor has now commenced delivery of timber to the mills and should be receiving payments beginning October 20, 2020.

Debtor states that he is prepared to make a modified plan but preparation of the modified plan and related motion have been delayed due to the unavailability of Debtor's counsel as a result of a medical condition. Debtor anticipates filing the modified prior to the hearing on this motion to dismiss.

DISCUSSION

Debtor is \$72,533.66 delinquent in plan payments, having failed to make a \$20,000 payment due July 2020 and a \$52,533.66 due August 2020. Failure to make plan payments which is a material default by debtor with respect to a term of a confirmed plan that is cause to dismiss a case. 11 U.S.C. § 1208(c)(6).

At the hearing, the Chapter 12 Trustee, Counsel for Debtor, and Counsel for Creditors Jack Faraone, Janet Wright, and Randy Wright addressed with the court the efforts being made to try and allow the Debtor to save this 2015 bankruptcy case notwithstanding the "2020 Challenges" thrown in front of all of them.

The Debtor agreed on the record that the plan payments as set forth in the proposed Second Modified Plan, with the first payment being due in October 2020, shall be timely made as provided in the proposed plan, and that the Chapter 12 Trustee shall then distribute those amounts as adequate protection payments (in light of the significant delay in 2020 payments to creditors) in the amounts as provided in the proposed Second Modified Plan. If the proposed Second Modified Plan is confirmed, the adequate protection payments shall be deemed payments under such confirmed plan.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on October 14, 2020. Dckt. 195, 193. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 196. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 12 case filed by the Chapter 12 Trustee, Michael Meyer ("Trustee"), having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

FINAL RULINGS

3. [20-20175-E-11](#) **HERBERT MILLER** **APPROVAL OF CHAPTER 11**
[JHH-6](#) **Judson Henry** **DISCLOSURE STATEMENT FILED BY**
 DEBTOR-IN-POSSESSION
 10-13-20 [186]

CASE DISMISSED: 11/16/20

Final Ruling: No appearance at the December 10, 2020 hearing is required.

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| <p>The case having previously been dismissed, the Approval of Chapter 11 Disclosure Statement is dismissed as moot.</p> |
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The case having previously been dismissed, the Approval of Chapter 11 Disclosure Statement is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Approval of Chapter 11 Disclosure Statement having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Approval of Chapter 11 Disclosure Statement is dismissed as moot, the case having been dismissed.