

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: DECEMBER 22, 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. [20-23104](#)-A-13     **IN RE: JOSE/MARGARITA VALADEZ**  
[DPC-2](#)

MOTION TO DISMISS CASE  
11-10-2020    [[60](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

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

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-2-2020    [[37](#)]

MUOI CHEA/ATTY. FOR DBT.  
12/4/20 FINAL INSTALLMENT PAID \$77

**Final Ruling**

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

3. [20-21907](#)-A-13     **IN RE: NED/EDNA SMITH**  
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE  
8-24-2020    [[45](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

Since the trustee reported that all issues underlying the motion to dismiss have been resolved and requested that the court drop the motion to dismiss, Status Report, ECF No. 77, the court will drop this matter from the calendar. The court will issue a civil minute order.

4. [20-21907](#)-A-13     **IN RE: NED/EDNA SMITH**  
[MET-3](#)

CONTINUED MOTION TO CONFIRM PLAN  
9-2-2020    [[49](#)]

MARY TERRANELLA/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:** First Amended Chapter 13 Plan, September 2, 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.

5. [20-23811](#)-A-13     **IN RE: DENISE BATTS**  
[DPC-2](#)

MOTION TO DISMISS CASE  
11-24-2020    [[56](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

6. [20-24014](#)-A-13     **IN RE: TREVOR TAYLOR**  
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-13-2020    [[16](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
ARNOLD GRAFF/ATTY. FOR MV.  
CARDINAL FINANCIAL COMPANY, LIMITED PARTNERSHIP VS.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject:** 3736 Lake Katie Way, Sacramento, California 95834

**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).

**FACTS**

Here the movant creditor obtained a loan against the subject property and recorded the deed of trust five days later. The recording date is the date of petition (August 19, 2020), ECF No. 20. The movant creditor now requests that the court either i) retroactively annul the stay or ii) grant Limited Stay Relief for the sole purpose of allowing the movant to re-record its deed of trust.

## **LAW**

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997).

"Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

Section 362(b)(3) of the Bankruptcy Code states that the filing of a petition does not operate as a stay "of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title," 11 U.S.C. § 362(b)(3).

Section 547(e)(2)(A) states a transfer is made "at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in subsection (c)(3)(B)," 11 U.S.C. 547(e)(2)(A). 11 U.S.C. 547(c)(3)(B) is relevant to transfers that create "a security interest in property acquired by the debtor...that is perfected on or before 30 days after the debtor receives possession of such property."

## **ANALYSIS**

The movant creditor recording the deed of trust within five days of obtaining the loan was an act to perfect the movant's interest in the subject property under § 362(b)(3). Section 547(e)(2)(A) applies here, as the movant perfected the lien within the thirty-day window under § 547(e)(2)(A). Section 547(c)(3)(B) does not apply, as the transfer did not involve creating a security interest in property acquired by the debtor. Therefore, the automatic stay never applied to the moving party regarding its lien against the subject property under 11 U.S.C. § 362(b)(3).

No effective relief can be awarded. The motion will be denied as moot.

## **CIVIL MINUTE ORDER**

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

Cardinal Financial Company, LP's motion has been presented to the court. 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 denied as moot.

7. [18-21824](#)-A-13     **IN RE: MICHAEL ZENDER**  
[TJW-4](#)

MOTION FOR ORDER TO DISBURSE FUNDS REALIZED FROM THE SALE OF  
REAL PROPERTY  
12-3-2020    [\[70\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

**Final Ruling**

The matter is continued to January 20, 2021, at 9:00 a.m. Not later than 7 days prior to the continued hearing, the debtor and the Chapter 13 trustee shall file a joint status report.

8. [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

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**CASE DISMISSAL**

The chapter 13 trustee moved to dismiss this case under § 1307(c)(1), stating the debtors were delinquent under the proposed plan and \$22,995.81 was due and owing, ECF No. 49. The debtors opposed the trustee's motion, stating the debtors will file a modified plan accounting for the delinquency and a motion to confirm said modified plan, ECF No. 53. The debtors subsequently filed a motion to modify chapter 13 plan, ECF No. 56. The court denied the debtors' motion, ECF No. 71. At the trustee's request, the hearing for this motion to dismiss was continued to allow the debtors to file and confirm a new chapter 13 plan, ECF No. 76. Since then, the debtors have not filed a new chapter 13 plan or a motion to confirm.

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the 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.

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

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.

9. [20-23627](#)-A-13     **IN RE: AMANDA SHRINER**  
[DPC-1](#)

MOTION TO DISMISS CASE  
11-18-2020    [\[58\]](#)

RICHARD JARE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

10. [20-24128](#)-A-13     **IN RE: JOANNA GOODWIN**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-9-2020    [\[14\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.  
NISSAN MOTOR ACCEPTANCE CORPORATION VS.

**Final Ruling**

**Motion:** Stay Relief

**Disposition:** Denied without prejudice

**Order:** Civil minute order

"A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) shall be made in accordance with Rule 9014," Federal Rule of Bankruptcy Procedure 4001(a). Fed. R. Bankr. Proc. 9014(a) requires that a motion for relief from automatic stay be served on the debtor. Here, the movant served the debtors at the incorrect address. The debtors' correct address is 1450 Stabler Lane, Apt #34, Yuba City, CA 95993. The Proof of Service states the debtors were served at 1450 Stabler Lane, Apt #31, Yuba City, CA 95993, ECF No. 19 (emphasis added). The court will deny the motion without prejudice for lack of sufficient notice to the debtor.

11. [15-25730](#)-A-13     **IN RE: JEFFREY/KELLY ERCOLINI**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING  
TRANSFER OF CLAIM  
12-1-2020    [\[94\]](#)

PETER MACALUSO/ATTY. FOR DBT.

**Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the transfer of claim will be vacated. A civil minute order will issue.

12. [20-23635](#)-A-13     **IN RE: CAROL ANDRESEN**  
[SLE-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF MECHANIC'S BANK  
8-19-2020    [\[14\]](#)

STEELE LANPHIER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

13. [19-22839](#)-A-13     **IN RE: RAYMOND/CAROLE CLOUTIER**  
[MET-3](#)

MOTION TO MODIFY PLAN  
11-10-2020    [\[55\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**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, November 10, 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. The court will also issue an order stating that Non-standard provisions for Section 2.01 shall corrected to be: "\$1,854.00 has been paid in through October 2020 (month 17) with a final payment of \$115,000.00 no later than December 25, 2020."

14. [19-22839](#)-A-13     **IN RE: RAYMOND/CAROLE CLOUTIER**  
[MET-4](#)

MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS  
ATTORNEY(S)  
11-12-2020    [[63](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Application:** Compensation and Expenses  
**Disposition:** Disapproved without prejudice  
**Order:** Civil minute order

All creditors and parties in interest have not received sufficient notice. The hearing on an application for approval of compensation or reimbursement of expenses, when the application requests approval of an amount exceeding \$1,000.00, must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(6). Here neither the debtor Raymond Cloutier nor any of the creditors were served, ECF No. 67.

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.

15. [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

#### **Final Ruling**

Since the trustee consents to the court dropping this dismissal motion if the court grants the debtor's motion to modify plan (Item 16), and since the court granted said motion to modify plan, the court will drop this matter from the calendar. The court will issue a civil minute order.

16. [18-27246](#)-A-13     **IN RE: WANDA MOORE**  
[PGM-4](#)

MOTION TO MODIFY PLAN  
11-16-2020    [[133](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **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, November 16, 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.

17. [20-21946](#)-A-13     **IN RE: SUE PIERCE**  
[DPC-2](#)

MOTION TO DISMISS CASE  
11-10-2020    [\[105\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

**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 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).

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$17,622.00. A monthly payment of \$3,394.22 will also be due before the hearing.

The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 8 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors.

For the foregoing reasons, the court will dismiss the 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.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor 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 because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

18. [20-24947](#)-A-13     **IN RE: DANIEL MCARTHEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-2-2020    [[25](#)]

JULIUS CHERRY/ATTY. FOR DBT.

**Final Ruling**

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

19. [18-26054](#)-A-13     **IN RE: ROBERT/BRITTANY ALONSO**  
[SLH-1](#)

MOTION TO REFINANCE  
11-16-2020    [[24](#)]

SETH HANSON/ATTY. FOR DBT.  
NON-OPPOSITION

**Final Ruling**

**Motion:** Approve New Debt [Refinance Mortgage Loan]

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

**Disposition:** Granted

**Order:** Prepared by moving party, trustee to approve the form of the 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 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).

The debtor seeks to incur new debt to refinance an existing mortgage loan. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion and approve the debtor's incurring of this new debt.

20. [20-24756](#)-A-13     **IN RE: EDGAR MANDAP**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
11-25-2020    [[26](#)]

MARK SHMORGON/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.

Section 1308 of the Bankruptcy Code provides: "Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a).

Here the debtor failed to file tax returns for years 2017, 2018 and 2019. The trustee held open the meeting of creditors to allow the debtor additional time to file his 2017, 2018 and 2019 tax returns. The continued meeting is on January 7, 2021. Since the trustee cannot yet assess feasibility of the plan or whether the plan has been proposed in good faith, the court will sustain the trustee's objection to confirmation.

### **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.

21. [19-27461](#)-A-13     **IN RE: RICHARD ACOSTA**  
[MOH-5](#)

MOTION TO CONFIRM PLAN  
10-12-2020    [\[83\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

The debtor's fourth amended Plan fails to comply with 11 U.S.C. §§1322, 1323, and 1325(a), as it suffers from the same inadequacies as all the previously filed amended plans and fails to resolve the Trustee's previous oppositions to the motions to confirm, MOH-2, MOH-3, MOH-4, ECF No. 81.

### **11 U.S.C. 1325(a)(3), (7)**

The plan does not satisfy the good faith requirements of § 1325(a)(3), (7). The plan does not address issues raised by the trustee and creditor Deutsche Bank, DPC-1 and APN-1. These issues include an objection regarding the debtor's real property interest and transfers of 3235 and 3237 Dry Creek Road, speculative income of \$2,820.00 from Sched I/J, and class treatment of Deutsche Bank.

### **11 U.S.C. 1325(a)(6)**

The plan is not feasible under § 1325(a)(6). The fourth amended plan, as with the third, second and first, still lists Specialized Loan Servicing in Class 4. To date, Specialized Loan Servicing has not filed an amended proof of claim or given any indication that the debtor is current on this loan. The debtor has not provided any proof that there is no delinquency owed to this creditor in order for the creditor to remain in Class 4.

The trustee is still unclear which address is the debtor's residence, and which addresses are rental property, and which were destroyed in the Camp Fire. The debtor's prior declaration stated 3237 Dry Creek was a rental. Petition says 3237 is his principal residence. However, the debtor stated in the declaration 3235 is current residence (emphasis added).

The trustee is still unclear as to the mortgage expenses identified in the debtor's schedules. The debtor has failed to amend the schedules, including Schedules I and J, so that they accurately reflect the debtor's monthly income and expenses. The debtor's declaration now states he is going to work more and earn a higher income to pay off arrears to Specialized Loan Servicing, ECF No. 86, which indicates that the budget stated in the schedules is inaccurate.

The fourth amended plan still does not identify a monthly payment the debtor's attorney should receive. The Additional Non-Standard Provisions only state that the debtor's attorney's fees are to be paid prior to any mortgage arrearage payments owed to PHH Mortgage or any dividend paid to unsecured creditors, ECF No. 85. The trustee is unclear about what should be paid to the debtor's attorney each month in the event this plan is confirmed.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

22. [20-22267](#)-A-13     **IN RE: KEVIN NORMAN**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
8-24-2020    [[38](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

Since the trustee requested that the court drop the motion to dismiss should the court grant the debtor's motion to confirm plan (Item 23), ECF No. 71, and since the court granted said motion to confirm plan, the court will drop this matter from the calendar. The court will issue a civil minute order.



23. [20-22267](#)-A-13     **IN RE: KEVIN NORMAN**  
[MET-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
9-7-2020    [[42](#)]

MARY TERRANELLA/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:** First Amended Chapter 13 Plan, September 7, 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.

24. [20-25379](#)-A-13     **IN RE: JOANNE ASPIRAS**  
[PLC-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
12-1-2020    [[8](#)]

PETER CIANCHETTA/ATTY. FOR DBT.  
NON-OPPOSITION

**No Ruling**

25. [19-27880](#)-A-13     **IN RE: JONATHAN GARCIA**  
DPC-3

OBJECTION TO CLAIM OF ELITE ACCEPTANCE CORPORATION  
11-5-2020    [[100](#)]

RICHARD JARE/ATTY. FOR DBT.  
NEIL ENMARK/ATTY. FOR MV.

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no written opposition required

**Disposition:** Sustained

**Order:** Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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).

The trustee objects to Claim No. 9-2, filed by the debtor's attorney.

### **11 U.S.C. § 501(c)**

Under 11 U.S.C. § 501(c), the debtor has a right to file a claim if the creditor does not timely file a claim. Here, the creditor timely filed Claim 9-1. The debtor never objected to Claim 9-1. The debtor's attorney subsequently filed Claim 9-2 after the claims bar date (October 29, 2020), ECF No. 10.

The debtor's attorney did not have standing under § 501(c) to file a claim on the creditor's behalf. Also, by filing Claim 9-2, the debtor does not allow the creditor the chance to defend its Claim 9-1 and the trustee now has multiple claims on file for the same debt. On this basis, the trustee's objection to claim will be sustained.

### **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 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 objection,

IT IS ORDERED that the objection is sustained.

26. [20-25080](#)-A-13     **IN RE: KARAMDEEP SINGH**  
[HRH-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-8-2020    [[24](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.  
TRANSPORT FUNDING, LLC VS.

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(2); trustee's non-opposition filed

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2015 Freightliner Cascadia Tractor Truck, VIN  
3AKJGLD57FSGC6798 and 2016 Freightliner Cascadia Tractor Truck, VIN  
3AKJGLD58GSHE3744

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

### **RELIEF FROM STAY**

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 2 postpetition payments are past due. The total postpetition delinquency is approximately \$11,109.54. The plan also does not provide for the movant's secured claim. For the foregoing reasons, the court finds cause for stay relief under § 362(d)(1).

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

### **CIVIL MINUTE ORDER**

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

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

Transport Funding, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2015 Freightliner Cascadia Tractor Truck, VIN 3AKJGLD57FSGC6798 and 2016 Freightliner Cascadia Tractor Truck, VIN 3AKJGLD58GSHE3744, 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.

27. [20-24781](#)-A-13     **IN RE: PHILIP/KATHRYN MALAN**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK  
11-25-2020    [[16](#)]

JULIUS CHERRY/ATTY. FOR DBT.

#### **No Ruling**

28. [20-24781](#)-A-13     **IN RE: PHILIP/KATHRYN MALAN**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MORTGAGE SOLUTIONS OF  
COLORADO, LLC  
10-28-2020    [[11](#)]

JULIUS CHERRY/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **Final Ruling**

Order filed December 12, 2020, ECF No. 28, granted a Stipulation to continue this matter to January 20, 2021 at 9:00 a.m.

29. [19-24685](#)-A-13     **IN RE: EMILIA ARDELEAN**  
[TBG-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
10-11-2019    [[37](#)]

STEPHAN BROWN/ATTY. FOR DBT.

**No Ruling**

30. [19-23696](#)-A-13     **IN RE: MICHAEL WILTON AND DAWN DUNN**  
[DPC-1](#)

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

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

**No Ruling**

31. [19-23696](#)-A-13     **IN RE: MICHAEL WILTON AND DAWN DUNN**  
[RAH-7](#)

MOTION TO MODIFY PLAN  
12-1-2020    [[80](#)]

RICHARD HALL/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**