

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** FEBRUARY 3, 2016  
**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 CASES

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**ORAL ARGUMENT**

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

**COURT'S ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-14704](#)-A-13 CARLIE MEDINA PLAN  
12-3-15 [[5](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

2. [15-13005](#)-A-13 RONALD/DENISE GRANT MOTION TO CONFIRM PLAN  
RSW-1 12-24-15 [[20](#)]  
RONALD GRANT/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by the trustee, approved by debtor's counsel

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 3015-1(d)(1), 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 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 bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

3. [15-13607](#)-A-13 BEATRICE NARVAEZ MOTION TO DISMISS CASE  
MHM-1 11-30-15 [[31](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative 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 \$2200.

#### **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.

4. [15-13607](#)-A-13 BEATRICE NARVAEZ  
PPR-1  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV

ROBERT WILLIAMS/Atty. for dbt.  
HALIE LEONARD/Atty. for mv.

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY  
10-8-15 [[9](#)]

#### **Tentative Ruling**

The case dismissed, the matter is denied as moot.

5. [15-13607](#)-A-13 BEATRICE NARVAEZ  
RSW-1  
BEATRICE NARVAEZ/MV

ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO VALUE  
COLLATERAL OF WESTLAKE  
FINANCIAL SERVICES, INC.  
11-10-15 [[20](#)]

#### **Tentative Ruling**

The case dismissed, the motion is denied as moot.

6. [15-13607](#)-A-13 BEATRICE NARVAEZ CONTINUED MOTION TO VALUE  
RSW-2 COLLATERAL OF DEUTSCHE BANK  
BEATRICE NARVAEZ/MV NATIONAL TRUST COMPANY  
11-10-15 [[24](#)]  
ROBERT WILLIAMS/Atty. for dbt.

### **Final Ruling**

The motion has been resolved by stipulation and order valuing collateral, and the hearing is dropped as moot.

7. [12-15109](#)-A-13 EDUARDO/GLENDA VALLADARES MOTION TO MODIFY PLAN  
PLG-3 12-22-15 [[92](#)]  
EDUARDO VALLADARES/MV  
STEVEN ALPERT/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

8. [15-14710](#)-A-13 MOISES PALMA PLAN  
12-4-15 [[5](#)]  
STEVEN ALPERT/Atty. for dbt.  
OBJECTION

**Tentative Ruling**

The First Amended Plan has been objected to by secured creditor Bank of the Ozarks, (see matter no. 9 on this calendar), which objection is sustained. This matter is moot.

9. [15-14710](#)-A-13 MOISES PALMA OBJECTION TO CONFIRMATION OF  
SBS-1 PLAN BY BANK OF THE OZARKS  
BANK OF THE OZARKS/MV 1-8-16 [[20](#)]  
STEVEN ALPERT/Atty. for dbt.  
SARA SPAETH/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

**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 proposes to reduce three different Class 2 secured claims based on the value of the collateral. But the failure to file a motion to value such collateral that is granted before or in conjunction with the hearing on confirmation warrants denial of confirmation of the plan. LBR 3015-1(j); see also Ch. 13 Plan § 2.09(c).

10. [12-17711](#)-A-13 JANA CHAMBERS MOTION TO DETERMINE FINAL CURE  
MHM-1 AND MORTGAGE PAYMENT RULE  
MICHAEL MEYER/MV 3002.1  
1-4-16 [[34](#)]  
PATRICK KAVANAGH/Atty. for dbt.

**Final Ruling**

**Motion:** Determination of Final Cure and Payment of Required Postpetition Amounts under Rule 3002.1(h)

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

**Disposition:** Granted

**Order:** Prepared by moving party

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).

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response under subdivision (g)." Fed. R. Bankr. P. 3002.1(f). The debtor may file this notice if the trustee does not timely file it. *Id.* The holder of the claim has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g).

The motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h). If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

For the reasons stated in the motion and supporting papers, the court will grant the motion. The court will determine that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

11. [15-14411](#)-A-13 NICK/CHRISTINA NGIRAILILD PLAN  
11-13-15 [[7](#)]  
PATRICK KAVANAGH/Atty. for dbt.

**No tentative ruling.**

12. [15-14713](#)-A-13 GUADALUPE MIRANDA ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
1-11-16 [[29](#)]

### **Tentative Ruling**

If the installment payments are not current at the time of the hearing, the case will be dismissed without further notice or hearing.

13. [15-13716](#)-A-13 RIGOBERTO GONZALEZ  
PK-8

MOTION FOR COMPENSATION FOR  
PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
1-13-16 [[134](#)]

PATRICK KAVANAGH/Atty. for dbt.  
DISMISSED

### **Tentative Ruling**

**Application:** Allowance of Final Compensation and Expense Reimbursement

**Notice:** LBR 9014-1(f)(2); no 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). 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, Patrick Kavanagh has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$0.00 and reimbursement of expenses in the amount of \$0.00. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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 a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

### **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.

Patrick Kavanagh's application for allowance of final 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 a final basis. The court allows final additional compensation in the amount of \$0.00 and reimbursement of additional expenses in the amount of \$0.00. The

aggregate allowed amount equals \$0.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$0.00 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. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

14. [11-17219](#)-A-13 PATRICIA GALLAND MOTION TO DISMISS CASE  
MHM-6 12-10-15 [[95](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

15. [15-14421](#)-A-13 JANICE KAVERN PLAN  
11-13-15 [[5](#)]  
PHILLIP GILLET/Atty. for dbt.

**No tentative ruling.**

16. [15-14421](#)-A-13 JANICE KAVERN MOTION TO VALUE COLLATERAL OF  
PWG-1 SPECIALIZED LOAN SERVICING LLC  
JANICE KAVERN/MV 1-15-16 [[25](#)]  
PHILLIP GILLET/Atty. for dbt.

**Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

**Notice:** LBR 9014-1(f)(2); no 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). 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 strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a),



1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 9827 Metherly Hill Rd., Bakersfield, CA.

The court values the collateral at \$246,736. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

#### **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 real property collateral 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 real property collateral located at 9827 Metherly Hill Rd., Bakersfield, CA, has a value of \$246,736. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

17. [12-12523](#)-A-13 LASHON FLETCHER  
MHM-4  
MICHAEL MEYER/MV  
STEVEN ALPERT/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
12-9-15 [[87](#)]

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

18. [14-10027](#)-A-13 DANIEL/GAIL BOWMAN  
PK-6

MOTION FOR COMPENSATION FOR  
PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
1-11-16 [[81](#)]

PATRICK KAVANAGH/Atty. for dbt.

### **Tentative Ruling**

**Application:** Allowance of Interim Compensation and Expense  
Reimbursement

**Notice:** LBR 9014-1(f) (2); no 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). 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, Patrick Kavanagh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5967.00 and reimbursement of expenses in the amount of \$133.92.

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.

Patrick Kavanagh'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 \$5967.00 and reimbursement of expenses in the amount of \$133.92. The aggregate allowed amount equals \$6100.92. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$6100.92 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.

19. [15-14432](#)-A-13 DARLENE/BRIAN ALLEN  
MDE-1  
HARLEY-DAVIDSON CREDIT  
CORP./MV  
ROBERT WILLIAMS/Atty. for dbt.  
MARK ESTLE/Atty. for mv.
- OBJECTION TO CONFIRMATION OF  
PLAN BY HARLEY-DAVIDSON CREDIT  
CORP.  
12-14-15 [[14](#)]

#### **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

**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.

Secured creditor Harley-Davidson Credit Corp. objects on several grounds. The court will sustain the objection on only one of those grounds—that the plan is not feasible. See 11 U.S.C. § 1325(a)(6). The court takes judicial notice of the debtors' schedules and statements and their contents. In the absence of an authenticity objection, the court finds that Schedules I and J are authentic, and constitute admissions of the debtor. Schedules I and J show that the debtor will have monthly net income of approximately \$1878.66, but the plan requires a monthly payment of \$2266. Thus, the debtor's monthly net income is less than the proposed monthly plan payment.

20. [15-14333](#)-A-13 JOSE/YENNY ALBERT  
ROBERT WILLIAMS/Atty. for dbt.
- PLAN  
11-5-15 [[5](#)]

**No tentative ruling.**

21. [15-14334](#)-A-13 FLORIANO/IMELDA RAMA PLAN  
11-5-15 [[5](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

22. [16-10034](#)-A-12 PEDRO/FELIPA GUTIERREZ MOTION TO IMPOSE AUTOMATIC STAY  
TOG-3 AND/OR MOTION TO EXTEND  
PEDRO GUTIERREZ/MV AUTOMATIC STAY  
1-25-16 [[27](#)]  
THOMAS GILLIS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Extend the Automatic Stay

**Notice:** LBR 9014-1(f) (2); no written opposition required

**Disposition:** Granted except as to any creditor without proper notice of this motion

**Order:** Prepared by moving party pursuant to the instructions below

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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c) (3) (B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

23. [15-14635](#)-A-13 CARLOS/SARA LAM PLAN  
11-29-15 [[5](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

24. [15-14636](#)-A-13 JONNA BOWSER  
ROBERT WILLIAMS/Atty. for dbt.

PLAN  
11-29-15 [[5](#)]

**No tentative ruling.**

25. [15-12639](#)-A-13 DAVID/MONICA GARZA  
MHM-3  
MICHAEL MEYER/MV  
PHILLIP GILLET/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
12-30-15 [[73](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

26. [15-14945](#)-A-12 GREGER BRANNSTROM

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
1-11-16 [[18](#)]

NOEL KNIGHT/Atty. for dbt.  
FILING FEE PAID \$275.00

**Final Ruling**

The fee paid, the order to show cause is discharged and the case will remain pending.

27. [15-14945](#)-A-12 GREGER BRANNSTROM  
AFW-1  
GREGER BRANNSTROM/MV  
NOEL KNIGHT/Atty. for dbt.

COUNTER MOTION TO ASSUME  
UNEXPIRED LEASE  
1-20-16 [[36](#)]

*[The hearing on this matter will follow the hearing on the motion for relief from the automatic stay in this case, matter no. 28 on this calendar, which motion is designated with docket control no. AFW-1.]*

**Tentative Ruling**

**Motion:** Counter Motion to Assume Unexpired Lease

**Disposition:** Denied

**Order:** Civil minute order

**NO ASSUMPTION OF TERMINATED LEASE**

As part of the debtor's opposition to the motion for relief from the automatic stay, the debtor moves to assume the Lease Agreement entered between the Debtor and Franceschi Trust for premises consisting of 400 acres in Wasco, California, in Kern County, and buildings and structures on such premises. The APNs for these premises are

described more fully in paragraph 1 of the Farming Lease, attached as Exhibit 1 to Franceschi Trust's motion for relief from stay.

The debtor admits the existence of a default judgment for possession against the debtor in the unlawful detainer proceeding referenced in the Kern County Superior Court, Case No. SCL-15000086. A copy of the default judgment is attached as Exhibit 4 to Franceschi Trust's motion for stay relief. No objection to the authenticity of the judgment has been raised. This judgment is in favor of plaintiff Franceschi Trust and against defendant Greger [sic] Brannstrom, the debtor in this case. The judgment awards plaintiff possession of the premises located at McCombs Road and Corcoran Road in Wasco, CA, and the APN numbers match the APN numbers shown in the Farming Lease attached as Exhibit 1 to Franceschi Trust's stay relief motion.

The judgment further provides that the rental agreement is canceled and that the lease is forfeited. Under principles of collateral estoppel and respect for state court judgments, the court must accept that there is no lease between the parties. Accordingly, there is no lease that may be assumed under § 365 of the Code.

#### **CIVIL MINUTE ORDER**

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

The debtor Greger Brannstrom's Counter Motion to Assume Unexpired Lease has been presented to the court. Having reviewed the papers and evidence filed in support and opposition to the motion and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied.

28. [15-14945](#)-A-12 GREGER BRANNSTROM  
AFW-1  
FRANCESCHI TRUST/MV  
NOEL KNIGHT/Atty. for dbt.  
ANNA WELLS/Atty. for mv.  
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-4-16 [[10](#)]

#### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject:** 400 acres in Wasco, Kern County, California, and buildings and structures on such premises. The APNs for these premises are described more fully in paragraph 1 of the Farming Lease, attached as Exhibit 1 to Franceschi Trust's motion for relief from stay.

Creditor and former lessor Franceschi Trust moves for relief from the automatic stay as to the subject property described above, formerly leased to Debtor Greger Brannstrom under a Farming Lease, a copy of which is attached as an exhibit to the motion for relief from the automatic stay. The debtor opposes.

In his opposition and counter-motion to assume the Farming Lease, the debtor admits the existence of a default judgment for possession against the debtor in the unlawful detainer proceeding referenced in the Kern County Superior Court, Case No. SCL-15000086. A copy of the default judgment is attached as Exhibit 4 to Franceschi Trust's motion for stay relief. No objection to the authenticity of the judgment has been raised. This judgment is in favor of plaintiff Franceschi Trust and against defendant Gregar [sic] Brannstrom, the debtor in this case. The judgment awards plaintiff possession of the premises located at McCombs Road and Corcoran Road in Wasco, CA, and the APN numbers match the APN numbers shown in the Farming Lease attached as Exhibit 1 to Franceschi Trust's stay relief motion.

A recent Ninth Circuit case determines the outcome of this proceeding, revealing that the stay is inapplicable to premises and the unlawful detainer proceeding filed by movant.

"[W]hether [a debtor who had been a lessee] had actual possession of the property when he filed for bankruptcy has no bearing on whether he had a cognizable possessory interest in the property." *Eden Place v. Perl (In re Perl)*, No. 14-60039, 2016 WL 142453, at \*5 (9th Cir. Jan. 8, 2016). Thus, whether Brannstrom actually remains in possession does not determine whether he has a legal or equitable interest that remains property of the estate here.

More specifically to this case, the Ninth Circuit held that "under California law, entry of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable possessory interests in the real property at issue." *Id.* In *Perl*, the court found that no stay violation occurred by Eden Place, LLC's executing of a writ of possession on the property against Perl because the debtor had had no remaining interest in the property subject to the writ of execution when the bankruptcy case had been filed. The court reasoned that:

The unlawful detainer judgment and writ of possession entered pursuant to California Code Civil Procedure § 415.46 bestowed legal title and all rights of possession upon Eden Place. Thus, at the time of the filing of the bankruptcy petition, Perl had been completely divested of all legal and equitable possessory rights that would otherwise be protected by the automatic stay"

*Id.* at \*7 (citation omitted).

In this case, a default judgment awarding possession of the subject property to Franceschi Trust, the former lessor under the Farming Lease, has been entered. The judgment further provides that the rental agreement is canceled and that the lease is forfeited.

This judgment was entered (filed) December 15, 2015. This bankruptcy case was filed December 28, 2015. Under principles of collateral estoppel and respect for state court judgments, the court must accept that there is no lease between the parties.

Additionally, a copy of a writ of possession has been attached to the motion as Exhibit 5. This writ was issued December 17, 2015. No objection has been raised to the authenticity of this writ. The judgment and writ have finally decided the issue of the debtor's legal or equitable interest in the subject property. The debtor has none pursuant to the Farming Lease that was terminated.

Accordingly, because the debtor no longer has a legal or equitable interest in the property, the automatic stay under § 362(a)(3) is inapplicable to the subject property, which is not property of the estate under § 541(a).

#### **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.

IT IS ORDERED that the motion is denied as moot.

29. [15-14447](#)-A-13 ASHLEY RANDOLPH PLAN  
11-17-15 [[5](#)]  
ROBERT WILLIAMS/Atty. for dbt.

*[The hearing on this matter will be concurrent with the hearing on Bank of America, N.A.'s Objection to Confirmation in this case having docket control no. BF-6, which is matter no. 30 on this calendar]*

**No tentative ruling.**

30. [15-14447](#)-A-13 ASHLEY RANDOLPH OBJECTION TO CONFIRMATION OF  
BF-6 PLAN BY BANK OF AMERICA, N.A.  
BANK OF AMERICA, N.A./MV 1-12-16 [[22](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
BRANDYE FOREMAN/Atty. for mv.

**No tentative ruling.**

31. [11-13553](#)-A-13 JOSE VILLALVASO AND MOTION TO MODIFY PLAN  
AOE-1 TERESA SOTO DE VILLALVASO 12-31-15 [[152](#)]  
JOSE VILLALVASO/MV  
ANTHONY EGBASE/Atty. for dbt.  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.



32. [15-11654](#)-A-13 ELLIOT BADGER AND BRENDA MOTION TO MODIFY PLAN  
RSW-2 VAQUERA 12-23-15 [[50](#)]  
ELLIOT BADGER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by the trustee, approved by debtor's counsel

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 3015-1(d)(2), 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 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. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

33. [10-62657](#)-A-13 RICK/SHAWN LOPEZ CONTINUED MOTION TO DISMISS  
MHM-4 CASE  
MICHAEL MEYER/MV 11-17-15 [[109](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

34. [14-12169](#)-A-13 KEVIN/MARYANN HISER  
RSW-2  
KEVIN HISER/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION FOR SUBSTITUTION AS THE  
SUCCESSOR FOR DECEASED DEBTOR  
1-19-16 [[46](#)]

### **Tentative Ruling**

**Motion:** Waiver of Requirement to File § 1328 Certifications and Substitute Joint Debtor as Representative for Deceased Debtor

**Notice:** LBR 9014-1(f) (2); no written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to the instructions below

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).

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 debtor named in the motion has died. Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f 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."

The court finds that further administration is possible and in the best interests of the debtor and creditors in this case as no creditor or party in interest has presented grounds for dismissing the case or denying the waiver requested. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rules 1001-1(f) and 1016-1(b), the court will grant the motion and 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. The court will also substitute joint debtor as the representative for the deceased debtor.

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. The court substitutes joint debtor Maryann Hiser as the representative for the deceased debtor, Kevin Hiser. And the court finds the continued administration of the estate is possible and in the best interests of the parties."

35. [14-14878](#)-A-13 BRIAN/DIANA POOLE  
MHM-3  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
1-6-16 [[57](#)]

**No tentative ruling.**

36. [15-13580](#)-A-13 ROBYN HILL AVERY  
MHM-2  
MICHAEL MEYER/MV  
NIMA VOKSHORI/Atty. for dbt.

MOTION TO DISMISS CASE  
12-22-15 [[65](#)]

**Tentative 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 \$720.

**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.

37. [15-13580](#)-A-13 ROBYN HILL AVERY  
NSV-2  
ROBYN HILL AVERY/MV  
NIMA VOKSHORI/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
11-30-15 [[47](#)]

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

### **CONFIRMATION**

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

### **75 DAY ORDER**

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

38. [14-11683](#)-A-13 JOSE SANCHEZ  
MHM-3  
MICHAEL MEYER/MV  
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO DISMISS CASE  
12-9-15 [[69](#)]

**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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$11,417.44.

**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 has been presented to the court. Having entered the default of the 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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$11,417.44. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

39. [15-14786](#)-A-13 MARY SMITH  
  
D. GARDNER/Atty. for dbt.  
\$310.00 FILING FEE PAID

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-28-15 [[12](#)]

**Final Ruling**

The fee paid, the order to show cause is discharged and the case will remain pending.

40. [12-16987](#)-A-13 LAWRENCE/TAMARA HUBBARD MOTION TO DISMISS CASE  
MHM-3 12-9-15 [[53](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2352.80.

**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 has been presented to the court. Having entered the default of the 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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2352.80. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

41. [14-14688](#)-A-13 J. MORA MOTION TO DISMISS CASE  
MHM-1 12-9-15 [[23](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

42. [15-14691](#)-A-13 MATTHEW LATRAY

PLAN

12-1-15 [[5](#)]

ROBERT WILLIAMS/Atty. for dbt.  
OBJECTION

**No tentative ruling.**