

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: MARCH 8, 2017
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. [16-13901](#)-A-13 LARRY/SILVIA HULSEY
MHM-1
OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
2-13-17 [[25](#)]

WILLIAM OLCOTT/Atty. for dbt.

No tentative ruling.

2. [16-13302](#)-A-13 LUIS ORTEGA AND NANCY
MHM-1 NUNEZ
MOTION TO DISMISS CASE
2-2-17 [[42](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

3. [16-12618](#)-A-13 PAUL/JACKIE PENA
PK-1
MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
2-15-17 [[58](#)]

PATRICK KAVANAGH/Atty. for dbt.

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 \$6000 and reimbursement of expenses in the amount of \$0.

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.

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 compensation in the amount of \$6000 and reimbursement of expenses in the amount of \$0. The aggregate allowed amount equals \$6000. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$4500 shall be allowed as an administrative expense to be paid through the plan because the remainder of the allowed amount was paid as a pre-petition retainer of \$1500. The applicant is authorized to draw on any retainer held.

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.

4. [16-12720](#)-A-13 FRED/KAREN FRANK
MHM-4
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
2-1-17 [[56](#)]

Final Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

Order: Prepared by the trustee

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). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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 court has entered a final order overruling the very exemption claim under § 703.140(b)(6) of the C.C.P. that now appears on amended Schedule C. The order precludes the debtors from re-litigating this exemption claim of \$3000 in tools under the doctrine of res judicata (and the doctrine of collateral estoppel). For the reasons stated, the court sustains the objection.

5. [16-12720](#)-A-13 FRED/KAREN FRANK CONTINUED MOTION TO CONFIRM
RSW-1 PLAN
FRED FRANK/MV 1-3-17 [[46](#)]
ROBERT WILLIAMS/Atty. for dbt.
OPPOSITION WITHDRAWN

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.

6. [11-61227](#)-A-13 GUILLERMO/ELVA RUBIO MOTION FOR COMPENSATION FOR
LKW-10 LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
2-8-17 [[204](#)]
LEONARD WELSH/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Offices of Leonard K. Welsh has applied for an allowance of final compensation and reimbursement of expenses.

The applicant requests that the court allow compensation in the amount of \$1515.00 and reimbursement of expenses in the amount of \$15.00. 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.

Law Offices of Leonard K. Welsh'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 compensation in the amount of \$1515.00 and reimbursement of expenses in the amount of 15.00. The aggregate allowed amount equals \$1530.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1530.00 shall be allowed as an administrative expense to be paid through the plan. 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.

7. [13-13632](#)-A-13 ROMEO/ROSEMARY TUTOP
RSW-2
ROSEMARY TUTOP/MV

MOTION FOR SUBSTITUTION AS THE
SUCCESSOR FOR DECEASED DEBTOR
AND/OR MOTION FOR WAIVER OF THE
SECTION 1328 CERTIFICATE
REQUIREMENT BY DEBTOR
2-8-17 [66]

ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

Notice: LBR 9014-1(f) (1); 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). 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 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."

Further administration is possible and in the best interests of the debtor and creditors in this case. 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.

The court will authorize further administration of this case as to the deceased debtor, 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.

Furthermore, the court will substitute Rosemary Tutop in the place of the deceased debtor as the deceased debtor's representative or successor.

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. Plan payments have been completed. The court waives the requirement that [deceased debtor's name] complete and file certifications

concerning compliance with § 1328. And the court finds the continued administration of the estate is possible and in the best interests of the parties. The court substitutes Rosemary Tutop in the place of the deceased debtor as the deceased debtor's representative or successor."

8. [16-10642](#)-A-13 TIMOTHY MAYO MOTION TO MODIFY PLAN
PK-2 1-6-17 [[42](#)]
TIMOTHY MAYO/MV
PATRICK KAVANAGH/Atty. for dbt.

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.

9. [16-10243](#)-A-13 ANGEL/LAURA SEGURA MOTION TO DISMISS CASE
MHM-1 2-7-17 [[42](#)]
MICHAEL MEYER/MV
WILLIAM OLCOTT/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [16-12953](#)-A-13 REGINA FADIPE
MHM-3
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
2-7-17 [[49](#)]

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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 6.5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. 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. The court hereby dismisses this case.

11. [16-12953](#)-A-13 REGINA FADIPE
RSW-1
REGINA FADIPE/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO CONFIRM PLAN
1-25-17 [[41](#)]

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.

12. [16-14453](#)-A-13 ROBERT/SANDRA UMSTEAD
APN-1
WELLS FARGO BANK, N.A./MV
AUSTIN NAGEL/Atty. for mv.
DISMISSED

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
2-15-17 [[29](#)]

Final Ruling

The case dismissed, the matter is dropped as moot.

13. [16-11354](#)-A-13 ODILON/SAURISARET MOTION TO DISMISS CASE
MHM-4 PEREZ-FLORES 2-3-17 [[121](#)]
MICHAEL MEYER/MV
PHILLIP MYER/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to April 5, 2017, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c) (1) and (3) as the debtor has failed to confirm a chapter 13 plan. This case was filed April 20, 2016.

A modified plan has been filed in this case. The scheduled hearing on the modification is April 5, 2017. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to April 5, 2017, at 9:00 a.m.

14. [16-13854](#)-A-13 ANNE RODY MOTION FOR COMPENSATION FOR
PK-1 PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
2-15-17 [[38](#)]

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 \$5820 and reimbursement of expenses in the amount of \$0.

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 \$5820 and reimbursement of expenses in the amount of \$0. The aggregate allowed amount equals \$5820. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$3630 shall be allowed as an administrative expense to be paid through the plan as the retainer amount was included in the total fees sought to be approved by this application.

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.

15. [16-14267](#)-A-13 MANSOOR ALAWGAREY
MHM-1
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
2-13-17 [[20](#)]

WILLIAM OLCOTT/Atty. for dbt.

No tentative ruling.

16. [11-63269](#)-A-13 WILLIAM/ROSIE MEANS
MHM-1
- MOTION TO DISMISS CASE
1-19-17 [[52](#)]
- MICHAEL MEYER/MV
LEONARD WELSH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [11-62772](#)-A-13 JOHN/BETH NEMETH
MHM-4
- MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
2-8-17 [[375](#)]
- PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

18. [15-12277](#)-A-13 RAUL/VIVIAN RAMOS
PK-4
- MOTION TO MODIFY PLAN
1-16-17 [[82](#)]
- RAUL RAMOS/MV
PATRICK KAVANAGH/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

19. [11-17278](#)-A-13 EDWARD/MARY JONES
MHM-5
- MOTION TO DISMISS CASE
1-12-17 [[131](#)]
- MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

20. [16-14083](#)-A-13 DANIEL/KIMBER LIESCH MOTION TO DISMISS CASE
MHM-1 1-26-17 [[13](#)]
MICHAEL MEYER/MV
NEIL SCHWARTZ/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 \$3,452.00.

CIVIL MINUTE ORDER

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

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

The 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.

21. [16-14083](#)-A-13 DANIEL/KIMBER LIESCH MOTION TO DISMISS CASE
MHM-2 2-3-17 [[17](#)]
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The court has already ruled that this case will be dismissed. This motion will be denied as moot.

22. [16-14084](#)-A-13 MICHAEL/JOANNA COUCH MOTION TO DISMISS CASE
MHM-2 2-9-17 [[34](#)]
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

23. [16-14084](#)-A-13 MICHAEL/JOANNA COUCH MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
ALLY BANK/MV 2-6-17 [[27](#)]
NEIL SCHWARTZ/Atty. for dbt.
ADAM BARASCH/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Chevrolet Silverado

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).

STAY RELIEF

Subsection (d) (1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d) (1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d) (1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d) (1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 3 post-petition payments due on the debt secured by the moving party's lien. The debtors do not oppose the relief sought, and have indicated they wish to surrender this vehicle pursuant to their plan. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d) (2) as relief is warranted 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.

Ally Bank'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 a 2016 Chevrolet Silverado, 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.

24. [16-14688](#)-A-13 JEREMY/SHIRRELL COOK
MHM-1
GREGORY SHANFELD/Atty. for dbt.
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
2-13-17 [[13](#)]

No tentative ruling.

25. [13-13298](#)-A-13 AUGSTEEN/BONNIE MCSPERITT
PK-3
PATRICK KAVANAGH/Atty. for dbt.
- MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
1-30-17 [[51](#)]

No tentative ruling.