

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY:** FRIDAY  
**DATE:** JULY 7, 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. [15-13803](#)-A-13 BRUCE JACKSON  
FW-1

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL,  
TRUSTEES ATTORNEY(S)  
6-6-17 [[39](#)]

GABRIEL WADDELL/Atty. for dbt.

### **Final Ruling**

**Application:** Allowance of Interim 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, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$6350.00 and reimbursement of expenses in the amount of \$367.43.

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.

Fear Waddell, P.C.'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 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.

2. [13-15305](#)-A-12 ROGELIO CALDERON AND ORDER TO SHOW CAUSE WHY  
MHM-1 LAURA BOBADILLA-DELGADO ATTORNEY FEES SHOULD NOT BE  
DISGORGED  
6-2-17 [79]

No tentative ruling

3. [13-15305](#)-A-12 ROGELIO CALDERON AND MOTION FOR COMPENSATION FOR  
TOG-7 LAURA BOBADILLA-DELGADO THOMAS O. GILLIS, DEBTORS  
ATTORNEY(S)  
5-24-17 [[68](#)]

No tentative ruling

4. [13-15305](#)-A-12 ROGELIO CALDERON AND MOTION TO EMPLOY THOMAS O.  
TOG-8 LAURA BOBADILLA-DELGADO GILLIS AS ATTORNEY(S)  
5-24-17 [[73](#)]

No tentative ruling



5. [17-11605](#)-A-13 OFELIA GARCIA  
APN-1  
SANTANDER CONSUMER USA INC./MV  
THOMAS GILLIS/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.
- OBJECTION TO CONFIRMATION OF  
PLAN BY SANTANDER CONSUMER USA  
INC.  
6-13-17 [[16](#)]

**No tentative ruling**

6. [17-10408](#)-A-13 PHIL/TAMMY SMITH  
FW-3  
PHIL SMITH/MV  
GABRIEL WADDELL/Atty. for dbt.
- MOTION TO CONFIRM PLAN  
5-23-17 [[37](#)]

**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.

7. [16-12713](#)-A-13 JASON ATHERTON AND  
TCS-3 GENZZIA DOVIGI-ATHERTON  
JASON ATHERTON/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING
- MOTION TO MODIFY PLAN  
6-1-17 [[44](#)]

**No tentative ruling**



8. [17-10817](#)-A-13 ALEX BECERRA MOTION TO CONFIRM PLAN  
JDR-1 5-26-17 [[26](#)]  
ALEX BECERRA/MV  
JEFFREY ROWE/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

9. [17-10817](#)-A-13 ALEX BECERRA MOTION TO VALUE COLLATERAL OF  
JDR-2 ONE MAIN FINANCIAL  
ALEX BECERRA/MV 6-9-17 [[36](#)]  
JEFFREY ROWE/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

10. [17-10817](#)-A-13 ALEX BECERRA MOTION TO VALUE COLLATERAL OF  
JDR-3 SOLAR CITY FINANCE COMPANY LLC  
ALEX BECERRA/MV 6-9-17 [[43](#)]  
JEFFREY ROWE/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

11. [17-10823](#)-A-13 SIMON/RUTH LOPEZ MOTION TO CONFIRM PLAN  
JRL-3 5-23-17 [[51](#)]  
SIMON LOPEZ/MV  
JERRY LOWE/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.



12. [17-10427](#)-A-12 LUIS/ANGELA OLIVEIRA  
WW-14  
LUIS OLIVEIRA/MV  
RILEY WALTER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM CHAPTER 12  
PLAN  
5-30-17 [[105](#)]

**No tentative ruling**

13. [11-16430](#)-A-13 RANDY/ANABEL GOMEZ  
DRJ-2  
RANDY GOMEZ/MV  
M. ENMARK/Atty. for dbt.

MOTION TO AVOID LIEN OF MIDLAND  
FUNDING, LLC  
6-1-17 [[124](#)]

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.



14. [13-16633](#)-A-13 FERNANDO ARROYO AND  
MHM-4 ELIZABETH BROERS  
MICHAEL MEYER/MV  
GARY HUSS/Atty. for dbt.

MOTION TO DISMISS CASE  
6-6-17 [[81](#)]

**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 \$5255.71.

**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. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

15. [17-10138](#)-A-13 GASPAR/FRANCISCA MENDEZ  
MHM-3

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
6-22-17 [[51](#)]

PETER BUNTING/Atty. for dbt.

**No tentative ruling**



16. [17-11148](#)-A-13 PAUL/DARLENE HOLLAND  
WLG-1  
PAUL HOLLAND/MV  
NICHOLAS WAJDA/Atty. for dbt.

MOTION TO CONFIRM PLAN  
5-2-17 [[20](#)]

### **Final Ruling**

**Motion:** Confirmation of a Chapter 13 Plan

**Disposition:** Denied without prejudice

**Order:** Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

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. In addition, governmental creditors must be noticed at the address provided on the *Roster of Governmental Agencies*, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

There are reasons that the court prefers the use of the court's matrix as the standard list of creditors and parties in interest to whom a Rule 2002(a) notice is transmitted. Creditors and other parties, other than the debtor, are added to this matrix only if they (i) are included in the Master Address List at the outset of the case by the debtor, (ii) are added to an amended Master Address List filed with the court, (iii) file a proof of claim in the case, (iv) file a request for special notice or a notice of appearance containing a request for special notice, (v) file a request with the Clerk's office to be added to the mailing list, (vi) file a global request under Rule 2002(g)(4) and 11 U.S.C. § 342(f) or a designation under Rule 5003(e) (granted that they are originally included as a creditor in the Master Address List by the debtor). The court's matrix thus updates virtually automatically whenever a creditor or party in interest files a proof of claim, requests special notice, or files a global notice request § 342(f). See 11 U.S.C. § 342(e), (f)(1)-(2); see also Fed. R. Bankr. P. 2002(g)(1), (2). It would be cumbersome and even impracticable for an attorney to keep track of each filing of a proof of claim, every request for special notice, and every global request made potentially with a different bankruptcy court, § 342(f). Therefore, the court prefers its mailing matrix for notice purposes because parties relying on their own self-constructed list for notice tend to miss at least one or more creditors or transmit notice to incorrect addresses for creditors and parties in interest.



17. [17-10362](#)-A-13 JUAN BERMUDEZ AND RACHEL MOTION TO DISMISS CASE  
MHM-1 BLAIN 6-6-17 [[16](#)]  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

Having been withdrawn, the matter is deemed voluntarily dismissed.  
The court drops the matter from calendar.

18. [17-11367](#)-A-13 KEVIN/JULIE GERHARDT MOTION TO DISMISS CASE  
MHM-1 6-1-17 [[39](#)]  
MICHAEL MEYER/MV  
PETER BUNTING/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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

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

**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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

19. [17-11367](#)-A-13 KEVIN/JULIE GERHARDT MOTION TO DISMISS CASE  
MHM-1 6-1-17 [[43](#)]  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.

**Final Ruling**

The case having been dismissed by a separate ruling on this calendar, the matter is denied as moot.

20. [17-11690](#)-A-13 LUIS BARRAGAN OBJECTION TO CONFIRMATION OF  
MHM-1 PLAN BY TRUSTEE MICHAEL H.  
MEYER  
6-16-17 [[14](#)]  
THOMAS GILLIS/Atty. for dbt.

**No tentative ruling**

21. [12-12699](#)-A-13 JUVENAL/OTILIA TORRES MOTION TO DETERMINE FINAL CURE  
MHM-1 AND MORTGAGE PAYMENT RULE  
MICHAEL MEYER/MV 3002.1  
6-6-17 [[77](#)]  
BENNY BARCO/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). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not timely file it. *Id.*

The holder of the claim then has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to agree or dispute whether the debtor has paid in full the amount required to cure the default on the claim and whether the debtor is otherwise current on all payments under § 1322(b)(5).

A 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.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bank. P. 3002.1(i).

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. It will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining 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.