

**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: AUGUST 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. [12-15109](#)-A-13 EDUARDO/GLENDA VALLADARES MOTION TO DISMISS CASE
MHM-5 6-16-16 [[110](#)]
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

2. [16-11916](#)-A-13 ROBYN HILL AVERY MOTION TO CONFIRM PLAN
NSV-2 6-16-16 [[29](#)]
ROBYN HILL AVERY/MV
NIMA VOKSHORI/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

3. [16-11317](#)-A-13 RAUL RONDEROS OBJECTION TO DEBTOR'S CLAIM OF
MHM-1 EXEMPTIONS
MICHAEL MEYER/MV 6-29-16 [[18](#)]
VINCENT GORSKI/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

4. [16-10719](#)-A-13 LUIS MUNOZ AND JOSEPHINE MOTION TO DISMISS CASE
MHM-2 CASTILLO 6-27-16 [[36](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case. The trustee states that a 75-day order was entered on June 8, 2016, and that such order required a plan to be confirmed no later than the 1st hearing date available after the 75-day period that commenced on the date of the hearing at which the order was issued.

September 7, 2016, is the first hearing date available after the 75-day period imposed by the court. This August 3, 2016, hearing date is not the "first hearing date" available.

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.

7. [16-11330](#)-A-13 COREY GARCIA MOTION TO DISMISS CASE
MHM-1 6-13-16 [[16](#)]
COREY GARCIA/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

8. [16-11330](#)-A-13 COREY GARCIA OBJECTION TO CONFIRMATION OF
MHM-2 PLAN BY TRUSTEE MICHAEL H.
MEYER
7-11-16 [[25](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

9. [11-10132](#)-A-13 JORGE/MARTHA AVINA MOTION TO DISMISS CASE
MHM-3 6-10-16 [[105](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [15-14432](#)-A-13 DARLENE/BRIAN ALLEN MOTION TO DISMISS CASE
MHM-2 6-17-16 [[49](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
MOTION WITHDRAWN, CASE
DISMISSED

Final Ruling

The motion withdrawn and the case dismissed, the matter is dropped as moot.

11. [16-11734](#)-A-13 LILIA MINER ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-29-16 [[32](#)]
\$30.00 FILING FEE PAID
7/5/16

Final Ruling

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

12. [16-11734](#)-A-13 LILIA MINER MOTION TO DISMISS CASE
MHM-1 7-11-16 [[34](#)]
MICHAEL MEYER/MV
RESPONSIVE PLEADING

No tentative ruling.

13. [14-14537](#)-A-13 DENNIS/LASHANE WILLIAMS CONTINUED MOTION TO DISMISS
MHM-3 CASE
MICHAEL MEYER/MV 4-20-16 [[49](#)]
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [14-14537](#)-A-13 DENNIS/LASHANE WILLIAMS MOTION TO MODIFY PLAN
RSW-2 6-6-16 [[56](#)]
DENNIS WILLIAMS/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

15. [16-11139](#)-A-13 RONALD/LINDA FERMAN
MHM-2
MICHAEL MEYER/MV
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO DISMISS CASE
6-24-16 [[26](#)]

No tentative ruling.

16. [16-11139](#)-A-13 RONALD/LINDA FERMAN
WDO-1
RONALD FERMAN/MV

MOTION TO VALUE COLLATERAL OF
KERN SCHOOLS FEDERAL CREDIT
UNION
7-1-16 [[30](#)]

WILLIAM OLCOTT/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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 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 value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a) (2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2001 Honda CR-V. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$3553.00.

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 debtor's motion to value collateral consisting of a motor vehicle 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 personal property collateral described as a 2001 Honda CR-V has a value of \$3553.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$3553.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

17. [15-10642](#)-A-13 ARISTEO RODRIGUEZ AND ESTHER ALCANTAR MOTION TO DISMISS CASE
MHM-2 6-16-16 [[59](#)]
MICHAEL MEYER/MV
RABIN POURNAZARIAN/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [15-12046](#)-A-13 JEFFREY/ANGELINA JORGENSEN MOTION TO DISMISS CASE
MHM-4 6-16-16 [[68](#)]
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 \$3000.

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.

19. [12-16549](#)-A-13 VANESSA WARD MOTION TO DISMISS CASE
MHM-5 6-8-16 [[100](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [16-10253](#)-A-13 JOE PEREZ PRETRIAL CONFERENCE RE: MOTION
KDG-1 TO DISMISS CASE
MONICA TRIANO/MV 3-16-16 [[38](#)]
PATRICK KAVANAGH/Atty. for dbt.
JACOB EATON/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

At the suggestion of the parties, the pretrial conference is continued to October 27, 2016, at 9:00 a.m. in Fresno. Not later than 14 days before the continued pretrial conference the parties shall file a joint status report.

21. [12-60354](#)-A-13 PATRICK/BARBARA ZIMMERMAN MOTION TO DISMISS CASE
CDR-1 7-6-16 [24]
CALIFORNIA FRANCHISE TAX
BOARD/MV
WILLIAM OLCOTT/Atty. for dbt.
CRAIG RUST/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted in part, denied in part

Order: Civil minute order

California Franchise Tax Board moves to dismiss Patrick Zimmerman and Barbara Zimmerman's Chapter 13 with prejudice, citing 11 U.S.C. § 1307(c) and 11 U.S.C. § 349(a) and *In re Leavitt*, 209 B.R. 935, 939 (9th Cir. BAP 1997), aff'd. 171 F.3d 1219 (9th Cir. 1999). The Franchise Tax Board finds § 13007(c) cause in the debtors' failure to pay post-petition taxes for 2012-2015, in the amount of \$16,932.79 and finds § 349(a) cause in a previous (and failed) Chapter 13 and in a pre-petition and post-petition pattern of failure to pay taxes. Debtors oppose the motion indicating a desire to file a modified plan, presumably to address the post-petition taxes.

DISCUSSION

Dismissal

Title 11 United States Code § 1307(c) provides, "Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . ." That section then lists eleven non-exclusive species of cause.

Among other things, failure to comply with applicable local rules and terms of the Chapter 13 plan are cause under § 1307(c). LBR 3015-1(b) (4) provides, "Chapter 13 Debtor's Duties. In addition to the duties imposed on a chapter 13 debtor by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and elsewhere in these Local Bankruptcy Rules, the following duties are imposed on chapter 13 debtors . . . (b) (4) Compliance with Applicable Nonbankruptcy Law. The debtor's financial and business affairs shall be conducted in accordance with applicable nonbankruptcy law including the timely filing of tax returns and payment of taxes."

The Franchise Tax Board alleges that the debtors are delinquent \$16,932.79 in post-petition income taxes. The debtors do not deny this allegation. Such a delinquency is cause under § 1307(c) and the court will grant the motion.

With Prejudice

Title 11 United States Code § 349(a) controls dismissals with prejudice. It provides, "Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the

discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title."

Bad faith is a one type of cause under § 349(a). *In re Leavitt*, 171 F.3d 1219, 12224 (9th Cir. 1999). As that court said, "Bad faith, as cause for the dismissal of a Chapter 13 petition with prejudice, involves the application of the "totality of the circumstances" test. [Citations omitted]. The bankruptcy court should consider the following factors:(1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner," [Citations omitted] (2) "the debtor's history of filings and dismissals," [Citations omitted] (3) whether "the debtor only intended to defeat state court litigation," [Citations omitted]; and(4) whether egregious behavior is present, [Citations omitted]."

Here, only the second factor (the existence of one prior bankruptcy) and possibly the fourth (a pre-petition and post-petition pattern of failure to pay taxes) are present. In mitigation, the Franchise Tax Board notes that the debtors have made significant payments toward each of the post-petition taxes due and that the debtors' failure to pay tax is only as to partial amounts due. On balance, the court does not find the bad faith and the request for dismissal with prejudice will be denied.

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 considered the well-pleaded facts of the motion,

IT IS ORDERED that (1) the motion is granted and the case is dismissed; and (2) the request for dismissal with prejudice is denied.

22. [16-11354](#)-A-13 ODILON/SAURISARET
MHM-1 PEREZ-FLORES
MICHAEL MEYER/MV
PHILLIP MYER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
6-13-16 [27]

No tentative ruling.

23. [16-11857](#)-A-13 ROBERT/CHRISTINE MC DUFF OBJECTION TO CONFIRMATION OF
THE BANK OF NEW YORK MELLON/MV PLAN BY THE BANK OF NEW YORK
MELLON
7-13-16 [[26](#)]
ROBERT WILLIAMS/Atty. for dbt.
CHRISTINA O/Atty. for mv.

No tentative ruling.

24. [11-17264](#)-A-13 MICHAEL/CHERYL PAULEY CONTINUED MOTION FOR RELIEF
EAT-1 FROM AUTOMATIC STAY
NATIONSTAR MORTGAGE LLC/MV 5-25-16 [[80](#)]
D. GARDNER/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

At the suggestion of the parties, this matter is continued to October 5, 2016, at 9:00 a.m. Not later than 7 days prior to the continued hearing date, the parties shall file a joint status report.

25. [11-62772](#)-A-13 JOHN/BETH NEMETH CONTINUED OBJECTION TO CLAIM OF
PWG-7 ANGEL OLIVERA SALAS, CLAIM
JOHN NEMETH/MV NUMBER 14
4-15-16 [[310](#)]
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

26. [16-10073](#)-A-13 DONALD WILLIFORD MOTION TO CONFIRM PLAN
RSW-3 6-22-16 [[65](#)]
DONALD WILLIFORD/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

27. [16-11576](#)-A-13 SCOTT KIRK MOTION TO DISMISS CASE
MHM-1 6-13-16 [[69](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [15-12277](#)-A-13 RAUL/VIVIAN RAMOS MOTION TO DISMISS CASE
MHM-1 6-10-16 [[28](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

29. [12-14478](#)-A-13 RAY/NADA KOMMEL CONTINUED MOTION FOR HARDSHIP
RSW-3 DISCHARGE
RAY KOMMEL/MV 5-3-16 [[61](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

30. [14-11379](#)-A-13 ROBERTA CUMBERLAND MOTION TO MODIFY PLAN
PK-6 5-25-16 [[145](#)]
ROBERTA CUMBERLAND/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Modification 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 Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g). 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 motion being noticed.

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.

31. [11-15082](#)-A-13 DANIEL MWANIKI AND MOTION TO DISMISS CASE
MHM-3 CATHERINE KIAMA 6-10-16 [[160](#)]
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

32. [15-14786](#)-A-13 MARY SMITH MOTION TO DISMISS CASE
MHM-3 6-16-16 [[96](#)]
MICHAEL MEYER/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

33. [15-14691](#)-A-13 MATTHEW LATRAY MOTION TO DISMISS CASE
MHM-2 6-6-16 [[62](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

34. [16-11295](#)-A-13 MICHAEL LOPEZ MOTION TO DISMISS CASE
MHM-2 6-20-16 [[23](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.