

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: AUGUST 8, 2018
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-10101](#)-A-13 **IN RE: JOSEPH/NANCY MOON**
[MHM-5](#)

MOTION TO DISMISS CASE
6-29-2018 [[67](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

2. [18-10101](#)-A-13 **IN RE: JOSEPH/NANCY MOON**
[RSW-2](#)

MOTION TO AVOID LIEN OF COLLECTO, INC.
7-17-2018 [[75](#)]

JOSEPH MOON/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

Judicial Lien: \$2,859.93

All Other Liens: \$137,088.00

Exemption: \$100,000.00

Value of Property: \$256,810.00

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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens, and the exemption amount, does not exceed the property's value. Accordingly, a prima facie case has not been made for relief under § 522(f).

3. [17-12105](#)-A-13 **IN RE: ALEXANDER JOHNSON**
[PK-4](#)

MOTION TO MODIFY PLAN
5-31-2018 [[90](#)]

ALEXANDER JOHNSON/MV
PATRICK KAVANAGH

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 modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. *See* 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); *see also In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); *see also In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

4. [18-10305](#)-A-13 **IN RE: TIM FISHER**
[PK-1](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
7-9-2018 [[18](#)]

PATRICK KAVANAGH

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, 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 \$4,050.00 and reimbursement of expenses in the amount of \$0.00.

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 \$4,050.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$4,050. As of the date of the application, the applicant held a retainer in the amount of \$1,000.00. The amount of \$3,050.00 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.

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.

5. [18-11608](#)-A-13 **IN RE: KELLY/ANGIE JETT**
[MHM-1](#)

MOTION TO DISMISS CASE
7-9-2018 [[19](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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 \$3,674.75.

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.

6. [18-11923](#)-A-13 **IN RE: VICTOR/LANNEISE OROPEZA**
[MHM-2](#)

MOTION TO DISMISS CASE
6-21-2018 [[18](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [18-12435](#)-A-13 **IN RE: JULIO GARCIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-2-2018 [[12](#)]

MICHAEL AVANESIAN
DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

8. [18-11241](#)-A-13 **IN RE: ELIAS RIVAS AND NICOLE BARRIENTE**
[MHM-2](#)

MOTION TO DISMISS CASE
7-6-2018 [[48](#)]

MICHAEL MEYER/MV
PHILLIP GILLET
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [18-10543](#)-A-13 **IN RE: CHARLES MASSEY**
[MHM-5](#)

MOTION TO DISMISS CASE
7-6-2018 [[52](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

No Ruling

10. [18-12949](#)-A-13 **IN RE: MANUEL/CAROLE CAMILO**
[TCS-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
7-24-2018 [8]

MANUEL CAMILO/MV
TIMOTHY SPRINGER

Tentative Ruling

Motion: Impose the Automatic Stay

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 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).

IMPOSITION OF THE STAY

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed." *Id.* (emphases added). However, the motion must be filed no later than 30 days after the filing of the later case. *Id.* The statute does not require the hearing to be completed within such 30-day period.

The court finds that 2 or more cases were pending within the one-year period before the filing of the current bankruptcy case but were dismissed. 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.

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.

A motion to impose the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is imposed in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code. The automatic stay shall be effective upon the date of entry of this order.

11. [13-13550](#)-A-13 **IN RE: DANIEL MADRIAGA**
[MHM-1](#)

MOTION TO DISMISS CASE
6-11-2018 [\[40\]](#)

MICHAEL MEYER/MV
PHILLIP GILLET

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 within the 60-month term of the plan. The debtor's 60-month plan term ended May 2018. The amount due remaining to be paid is \$157,360.68 to complete the plan. Payments are delinquent in the amount of \$157,360.68.

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 during the plan's 60-month term. This delinquency following the completion of

the plan's term constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

12. [16-12851](#)-A-13 **IN RE: ALLEN/KATHERIN TOLBERT**
[RSW-3](#)

MOTION TO MODIFY PLAN
6-14-2018 [[46](#)]

ALLEN TOLBERT/MV
ROBERT WILLIAMS

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 modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

13. [18-11763](#)-A-13 **IN RE: JASON/KIMBERLY WHITLOCK**
[MHM-3](#)

MOTION TO DISMISS CASE
6-21-2018 [[24](#)]

MICHAEL MEYER/MV
RICHARD STURDEVANT
RESPONSIVE PLEADING

Final Ruling

The trustee's motion to dismiss is based on (1) failure to file complete and accurate schedules, and (2) failure to appear at the scheduled § 341 meeting of creditors. The debtors state that the missing schedules and statements have been filed. The continued creditors' meeting is August 14, 2018. So the hearing will be continued to September 5, 2018, at 9:00 a.m. If the debtor has attended the § 341 meeting of creditors and filed all missing schedules, the trustee shall withdraw the motion by August 22, 2018. Otherwise, the court may grant the motion.

14. [18-11868](#)-A-13 **IN RE: MIGUEL VIVEROS**
[MHM-2](#)

MOTION TO DISMISS CASE
7-6-2018 [[19](#)]

MICHAEL MEYER/MV
PHILLIP GILLET
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [18-11873](#)-A-13 **IN RE: CORINA YBARRA**
[MHM-1](#)

MOTION TO DISMISS CASE
6-21-2018 [[28](#)]

MICHAEL MEYER/MV
SUSAN SALEHI
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [17-11274](#)-A-13 **IN RE: CLINT/JUDITH HARRISON**
[RSW-4](#)

MOTION TO MODIFY PLAN
6-14-2018 [[99](#)]

CLINT HARRISON/MV
ROBERT WILLIAMS

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 modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

17. [18-11975](#)-A-13 **IN RE: KEITH/KRISTI BLACKETT**
[DMG-2](#)

MOTION TO CONFIRM PLAN
6-13-2018 [[26](#)]

KEITH BLACKETT/MV
D. GARDNER
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [18-11975](#)-A-13 **IN RE: KEITH/KRISTI BLACKETT**
[MHM-1](#)

MOTION TO DISMISS CASE
7-9-2018 [[32](#)]

MICHAEL MEYER/MV
D. GARDNER
RESPONSIVE PLEADING

No Ruling

19. [18-11889](#)-A-13 **IN RE: MATTHEW/JENNIFER FACIO**
[MHM-1](#)

MOTION TO DISMISS CASE
6-21-2018 [[23](#)]

MICHAEL MEYER/MV
SUSAN SALEHI
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [17-14292](#)-A-13 **IN RE: JUAN MEDINA- HERRERA AND STEFANIEROSE**
MEDINA
[MHM-3](#)

MOTION TO DISMISS CASE
6-29-2018 [[72](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

No Ruling