

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** September 6, 2017  
**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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**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. [17-11701](#)-A-13 MANUEL MATINEZ AND SUSANA MOTION TO CONFIRM PLAN  
TGF-1 MARTINEZ 7-12-17 [26]  
MANUEL MATINEZ/MV  
VINCENT GORSKI/Atty. for dbt.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil Minute Order

Debtors Manuel Martinez and Susana Martinez move to confirm Chapter 13 plan, July 12, 2017, ECF # 31.

### **DISCUSSION**

#### Notice Deficiencies

Local Rules require that creditors and other parties in interest file written opposition to a motion to confirm a Chapter 13 plan 14 days prior to the hearing. LBR 3015-1(d)(1), 9014-1(f)(1).

Here, the notice of motion incorrectly states that no written opposition is required. "Opposition, if any, to the granting of the motion may be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs." Notice 2:1-3, July 12, 2017, ECF # 27.

#### Feasibility

The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

One such element is feasibility. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (1st Cir. BAP 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. E.g., *In re Barnes*, 275 B.R. 889, 894 (Bankr.E.D.Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr.D.N.J.2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.")" *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Here, plan payments are \$3,100 per month. Chapter 13 plan § 1.01, July

12, 2017, ECF # 31. Manuel Martinez declares, "We believe that we are able to pay the Trustee the modified plan payment of \$3,100.00 per month for 60 months." Decl. Martinez ¶ 4, July 12, 2017, ECF # 29. This is directly contrary to the debtors' most recent Schedules I and J, which show monthly net income of \$2,555.89. Schedules I and J, May 14, 2017, ECF # 13. This is a difference of \$544.11 per month. Moreover, the debtors particularly that they expect neither an increase in income, nor a decrease in expenses in the next year. See Schedule I, Line 13 and Schedule J, Line 23c.

As a result, even if the motion had been properly noticed, the court would deny confirmation because the debtors have not sustained their burden of proof on the feasibility of the plan.

#### **75 DAY ORDER**

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's declaration without further notice or hearing. See 11 U.S.C. § 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.

Debtor Manuel Matinez and Susana Martinez's motion to confirm Chapter 13 plan, July 12, 2017, ECF # 31, has been presented to the court. Having considered the well-pleaded the motion, plan and all supporting documents,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that the debtors shall confirm a Chapter 13 plan no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's declaration without further notice or hearing.

2. [16-13302](#)-A-13 LUIS ORTEGA AND NANCY MOTION FOR COMPENSATION FOR  
PK-3 NUNEZ PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
7-17-17 [[71](#)]
- PATRICK KAVANAGH/Atty. for dbt.

#### **Tentative 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). 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 \$6000.00 and reimbursement of expenses in the amount of \$108.72.

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 \$6000.00 and reimbursement of expenses in the amount of \$108.72. The aggregate allowed amount equals \$6108.72. As of the date of the application, the applicant held a retainer in the amount of \$1500.00. The amount of \$4608.72 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 (if this remainder has not already been paid from the retainer). 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.

3. [17-12105](#)-A-13 ALEXANDER JOHNSON MOTION TO DISMISS CASE  
MHM-1 7-7-17 [[21](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

4. [17-12105](#)-A-13 ALEXANDER JOHNSON MOTION TO DISMISS CASE  
MHM-2 7-10-17 [[26](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

5. [15-13607](#)-A-13 BEATRICE NARVAEZ MOTION TO DISMISS CASE  
MHM-3 7-6-17 [[110](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

6. [17-10012](#)-A-13 MICHAEL SPRINGSTEAD CONTINUED MOTION TO CONVERT  
MHM-2 CASE FROM CHAPTER 13 TO CHAPTER  
MICHAEL MEYER/MV 7 AND/OR MOTION TO DISMISS CASE  
6-14-17 [[57](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**No Ruling**

7. [17-10012](#)-A-13 MICHAEL SPRINGSTEAD MOTION TO CONFIRM PLAN  
RSW-3 6-28-17 [[61](#)]  
MICHAEL SPRINGSTEAD/MV  
ROBERT WILLIAMS/Atty. for dbt.

**No Ruling**

8. [13-11119](#)-A-13 SALVADOR LOPEZ AND CONNIE MOTION TO SELL  
PK-7 LOZANO 8-9-17 [[113](#)]  
SALVADOR LOPEZ/MV  
PATRICK KAVANAGH/Atty. for dbt.

**Final Ruling**

The notice of hearing was served on the court's matrix, with the exception of the chapter 13 trustee and the U.S. Trustee. However, the notice does not state when opposition must be filed or raised. Due process has not been satisfied given that creditors have not received "notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Creditors will be unable to present their objections when they have not been informed when or how to object.

The motion is denied without prejudice. The court will issue a civil minute order.

9. [17-12120](#)-A-13 SHERRY SIMPSON MOTION TO DISMISS CASE  
MHM-1 7-10-17 [[21](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

10. [17-12120](#)-A-13 SHERRY SIMPSON MOTION TO AVOID LIEN OF DRRF II  
RSW-2 SPE, LLC  
SHERRY SIMPSON/MV 7-28-17 [[38](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**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 2108 Sunshine Avenue, Bakersfield, CA's value by an amount greater than or equal to the judicial lien. And the responding party's judicial lien, all other liens, and the exemption amount together exceed 1921 La France Dr., Bakersfield, CA's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely as to both properties.

11. [17-12120](#)-A-13 SHERRY SIMPSON  
RSW-3  
SHERRY SIMPSON/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO CONFIRM PLAN  
7-12-17 [[29](#)]

### **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. [17-12220](#)-A-13 KRISTOPHER FRANZEN AND MOTION TO DISMISS CASE  
MHM-1 VIRGINIA GONZALEZ-FRANZEN 8-7-17 [[16](#)]  
MICHAEL MEYER/MV  
NEIL SCHWARTZ/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

13. [17-10021](#)-A-13 TERRY/MAUREEN HENDERSON MOTION TO CONFIRM PLAN  
DMG-4 7-25-17 [[66](#)]  
TERRY HENDERSON/MV  
D. GARDNER/Atty. for dbt.  
RESPONSIVE PLEADING

**No Ruling**

14. [17-12229](#)-A-13 EDUARDO ESCOBAR AND OBJECTION TO CONFIRMATION OF  
APN-1 JOAQUINA MIRANDA PLAN BY VW CREDIT, INC.  
VW CREDIT, INC./MV 8-9-17 [[26](#)]  
REBECCA TOMILOWITZ/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

**Final Ruling**

The court has issued a final ruling on this calendar dismissing this case. This objection will be overruled as moot.

15. [17-12229](#)-A-13 EDUARDO ESCOBAR AND  
MHM-1 JOAQUINA MIRANDA  
MICHAEL MEYER/MV  
REBECCA TOMILOWITZ/Atty. for dbt.

MOTION TO DISMISS CASE  
8-4-17 [[19](#)]

### **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 credit a counseling certificate showing that the debtor received the required credit counseling within the 180-day period preceding the petition date. With exceptions not applicable here, an individual cannot be a debtor under Title 11 unless such individual has received credit counseling as prescribed by § 109(h)(1). And credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

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.

16. [12-13230](#)-A-13 VICTOR/YOLANDA NUNEZ  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DETERMINE FINAL CURE  
AND MORTGAGE PAYMENT RULE  
3002.1  
7-12-17 [[39](#)]

ROBERT WILLIAMS/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.

17. [17-10034](#)-A-13 VIRGILIO/YOLANDA SERCENA CONTINUED MOTION TO DISMISS  
MHM-1 CASE  
MICHAEL MEYER/MV 4-26-17 [[38](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

18. [17-10034](#)-A-13 VIRGILIO/YOLANDA SERCENA MOTION TO CONFIRM PLAN  
RSW-6 7-26-17 [[94](#)]  
VIRGILIO SERCENA/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

19. [16-13241](#)-A-13 MONIQUE BOOKOUT  
RSW-4  
MONIQUE BOOKOUT/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
6-29-17 [[54](#)]

### **Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d) (2), 9014-1(f) (1); written opposition filed by the trustee

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d) (2). Creditor U.S. Bank, N.A. opposes the motion, objecting to the modification.

### **MISCLASSIFICATION OF SECURED CLAIM**

The plan classifies U.S. Bank, N.A.'s claim in Class 4. However, U.S. Bank has filed a proof of claim showing an arrearage owed to it. Claim No. 4-1, Oct. 28, 2016.

#### Class 4 Excludes Delinquent Claims

This district's form chapter 13 plan provides that "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." Form Chapter 13 Plan, EDC 3-080. Claims that are in default and mature after the completion of the plan's term are to be placed in Class 1.

The plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage. Given that this creditor has filed a proof of claim, its claim is deemed allowed until a party in interest objects. 11 U.S.C. § 502(a). As a result, the claim is delinquent and matures after the completion of the Plan. Placing the claim in Class 4 violates the terms of this district's form plan. This claim must be placed in Class 1.

Additionally, the plan indicates payment of only the ongoing post-petition mortgage installments on the Class 4 claim and not any pre-petition arrearage. Placing this delinquent secured claim in Class 4 means that the plan fails to cure a pre-petition arrearage in violation of §§ 1322(b) (2), (b) (5), and 1325(a) (5) (B) (ii).

#### Trial Loan Modification

The court realizes the debtor has alleged that she is in a trial loan modification. But the court will not allow delinquent secured claim to be reclassified in Class 4 when the parties have entered only a *trial* loan modification rather than a final loan modification that cures the delinquency.

## 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.

Secured creditor U.S. Bank, N.A.'s objection to the debtor's motion to approve a chapter 13 plan modification has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied without prejudice, and the modification is disapproved.

20. [16-13343](#)-A-13 AIDE/JAMES BLANCO MOTION TO MODIFY PLAN  
PK-5 7-25-17 [[97](#)]  
AIDE BLANCO/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

### No Ruling

21. [17-11951](#)-A-13 RITO/SYLVIA MALDONADO MOTION TO DISMISS CASE  
MHM-1 7-7-17 [[18](#)]  
MICHAEL MEYER/MV  
NEIL SCHWARTZ/Atty. for dbt.  
WITHDRAWN

### Final Ruling

The motion withdrawn, the matter is dropped as moot.

22. [17-11951](#)-A-13 RITO/SYLVIA MALDONADO MOTION TO DISMISS CASE  
MHM-2 7-10-17 [[23](#)]  
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 \$3,243.45.

#### **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.

23. [17-12356](#)-A-13 LARRY/SILVIA HULSEY  
MHM-1  
MICHAEL MEYER/MV  
WILLIAM OLCOTT/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
8-4-17 [[24](#)]

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

24. [17-12356](#)-A-13 LARRY/SILVIA HULSEY  
NLL-1  
JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION/MV  
WILLIAM OLCOTT/Atty. for dbt.  
NANCY LEE/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION  
8-9-17 [[32](#)]

### **Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Sustained

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

### **DISCUSSION**

The plan proposes to reduce a Class 2 secured claim based on the value of the collateral. Fed. R. Evid. 201(b)(2), (c). But the failure to file a motion to value such collateral that is granted before or in conjunction with the hearing on confirmation warrants denial of confirmation of the plan. LBR 3015-1(j); see also Ch. 13 Plan § 2.09(c). The court will sustain the objection.

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

### **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.

JPMorgan Chase Bank, N.A.'s objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained, and confirmation is denied.

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

25. [17-11264](#)-A-13 JUSTIN/KATHARINE FARMER  
PK-1

CONTINUED MOTION FOR  
COMPENSATION FOR PATRICK  
KAVANAGH, DEBTORS ATTORNEY(S)  
7-11-17 [[18](#)]

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 \$3050 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 \$3050 and reimbursement of expenses in the amount of \$0. The aggregate allowed amount equals \$3050. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$3050 shall be allowed as an administrative expense to be paid through the plan.

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.

26. [16-14465](#)-A-13 MATTHEW ESCALANTE MOTION TO DISMISS CASE  
MHM-1 7-7-17 [[58](#)]  
MICHAEL MEYER/MV  
D. GARDNER/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

27. [16-14465](#)-A-13 MATTHEW ESCALANTE MOTION TO DISMISS CASE  
MHM-2 7-10-17 [[62](#)]  
MICHAEL MEYER/MV  
D. GARDNER/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
RESPONSIVE PLEADING

**No Ruling**

28. [17-11274](#)-A-13 CLINT/JUDITH HARRISON OBJECTION TO CONFIRMATION OF  
MHM-1 PLAN BY TRUSTEE MICHAEL H.  
MEYER  
7-12-17 [[51](#)]

ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan  
**Notice:** LBR 3015-1(c) (4); no written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

**MOOTNESS**

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

29. [17-11274](#)-A-13 CLINT/JUDITH HARRISON MOTION TO AVOID LIEN OF SEVEN  
RSW-2 OAKS AT GRAND ISLAND HOMEOWNERS  
CLINT HARRISON/MV ASSOCIATION  
6-22-17 [[39](#)]

ROBERT WILLIAMS/Atty. for dbt.

**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 judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

30. [17-11175](#)-A-13 MARCELO MANIBO MOTION TO DISMISS CASE  
MHM-2 8-4-17 [[38](#)]  
MICHAEL MEYER/MV  
VINCENT GORSKI/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

31. [13-16685](#)-A-13 ROBERT/ORENE BARKER MOTION TO MODIFY PLAN  
PK-5 7-31-17 [[117](#)]  
ROBERT BARKER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**No Ruling**

32. [13-16685](#)-A-13 ROBERT/ORENE BARKER  
PK-6  
ROBERT BARKER/MV

MOTION FOR SUBSTITUTION AS  
REPRESENTATIVE FOR THE  
DECEASED, FOR CONTINUED  
ADMINISTRATION OF THE CASE  
UNDER CHAPTER 13, FOR EXEMPTION  
FROM FINANCIAL MANAGEMENT  
COURSE, FOR WAIVER OF  
CERTIFICATION REQUIREMENT FOR  
ENTRY OF DISCHARGE IN CHAPTER  
13 CASE  
7-31-17 [[125](#)]

PATRICK KAVANAGH/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 Rule 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 Robert Barker 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 Robert Barker in the place of the deceased debtor as the deceased debtor's representative or successor."

33. [17-12485](#)-A-13 BOB LONG MOTION TO DISMISS CASE  
MHM-1 8-4-17 [[18](#)]  
MICHAEL MEYER/MV  
STEVEN ALPERT/Atty. for dbt.  
RESPONSIVE PLEADING

**No Ruling**

34. [12-17090](#)-A-13 SCOTT/VALERIE HOLLOWAY MOTION FOR COMPENSATION FOR  
PK-2 PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
8-11-17 [[59](#)]  
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 \$2100.00 and reimbursement of expenses in the amount of \$110.40. 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



## CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

36. [17-13148](#)-A-13 SANDEEP KAUR MOTION TO EXTEND AUTOMATIC STAY  
PBB-1 8-24-17 [[11](#)]  
SANDEEP KAUR/MV  
PETER BUNTING/Atty. for dbt.  
OST 8/25/17

### Tentative Ruling

**Motion:** Extend the Automatic Stay

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

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

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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