

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

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

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: SEPTEMBER 24, 2015
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.

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. [15-13002](#)-A-13 KARLA DAY
VRP-1
KARLA DAY/MV
VARDUHI PETROSYAN/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, NA
8-3-15 [[8](#)]

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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 strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 2010 Los Altos Ave., Clovis, CA.

The court values the collateral at \$227,347. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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 real property collateral 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 real property collateral located at 2010 Los Altos Ave., Clovis, CA, has a value of \$227,347. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

2. [13-17007](#)-A-13 DANNY/LORI CARRELL MOTION TO DISMISS CASE
MHM-3 8-7-15 [[94](#)]
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [15-13410](#)-A-13 KIMBERLY SHACKELFORD MOTION TO EXTEND AUTOMATIC STAY
SAH-1 8-31-15 [[8](#)]
KIMBERLY SHACKELFORD/MV
SUSAN HEMB/Atty. for dbt.

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.

4. [15-11215](#)-A-13 JOSE/MARIA INES TAFOLLA MOTION TO DISMISS CASE
MHM-1 8-12-15 [[35](#)]
MICHAEL MEYER/MV
DAVID JENKINS/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 \$2789.76.

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. Payments are delinquent in the amount of \$2789.76. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

5. [13-14616](#)-A-13 ROXANA MARTINEZ
MHM-2
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO DISMISS CASE
8-7-15 [[56](#)]

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 \$2429.

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. Payments are delinquent in the amount of \$2429. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

6. [12-15420](#)-A-13 ROBERT/MEGAN BUCHANAN MOTION TO DISMISS CASE
MHM-1 8-7-15 [[42](#)]
MICHAEL MEYER/MV
GEOFFREY ADALIAN/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 \$3769.49.

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. Payments are delinquent in the amount of \$3769.49. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

7. [15-10425](#)-A-13 JOSEPH/KIMBERLY MCDERMOTT MOTION TO DISMISS CASE
MHM-1 8-12-15 [[18](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/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 \$5052.

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. Payments are delinquent in the amount of \$5052. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

8. [13-15181](#)-A-13 LINDSAY LEMONS
GEG-10
WAYNE STORMS/MV
SCOTT LYONS/Atty. for dbt.
GLEN GATES/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
8-13-15 [[360](#)]

No tentative ruling.

9. [13-15181](#)-A-13 LINDSAY LEMONS
SL-6
LINDSAY LEMONS/MV

SCOTT LYONS/Atty. for dbt.

CONTINUED MOTION TO DISBURSE
FUNDS AS ADEQUATE PROTECTION
UNDER 11 U.S.C. 1326
8-26-15 [[372](#)]

No tentative ruling.

10. [09-14240](#)-A-13 LEO/CANDICE BARNES
TCS-3
LEO BARNES/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO AVOID LIEN OF OLD
DOMINION CAPITAL
9-3-15 [[49](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$206,707.38

Property Value: \$146,000

Judicial Lien Avoided: \$23,185.38

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).

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.

11. [13-10447](#)-A-13 JARRED/OLIVIA PIGG
PLF-13
JARRED PIGG/MV
PETER FEAR/Atty. for dbt.

MOTION TO MODIFY PLAN
8-6-15 [[124](#)]

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 debtor's counsel using Form EDC 3-081 and signed by the trustee

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

12. [13-13655](#)-A-13 FROYLAN/MARGARET GARCIA
MHM-3
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
8-7-15 [[68](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

DISMISSAL MOTION

The trustee moves to dismiss as the debtors have not made all payments due under the plan. The debtors oppose stating their intentions to be current by the date of the hearing. This statement is an implied admission by the debtors of their default. 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 \$3218.

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. Payments are delinquent in the amount of \$3218. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

13. [10-14164](#)-A-13 NOE MALDONADO FERNANDEZ MOTION TO DISMISS CASE
MHM-2 AND MARIA CISNEROS OROZCO 8-6-15 [[69](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [10-11369](#)-A-13 JAMES/SHERRIE ROBERTSON OBJECTION TO DISCHARGE BY
MHM-1 MICHAEL H. MEYER
MICHAEL MEYER/MV 8-20-15 [[71](#)]
M. ENMARK/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

15. [11-17772](#)-A-13 HERMINIA AVILA MOTION TO DISMISS CASE
MHM-2 8-6-15 [[64](#)]
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [15-12174](#)-A-13 VICTOR/EVILA NAJERA
NLG-1
U.S. BANK NATIONAL
ASSOCIATION/MV
ANTHONY EGBASE/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-27-15 [[55](#)]

Final Ruling

The case has been dismissed. Dismissal of the case revested property of the estate in the debtors. 11 U.S.C. § 349(b)(3). The automatic stay as to property therefore terminated as such property is no longer in the estate. *Id.* § 362(c)(1). As to the debtors, the automatic stay terminates upon dismissal of the case. *Id.* § 362(c)(2)(B). The motion will be denied as moot.

17. [15-13077](#)-A-13 ANTONIO/MARIA ROMERO
SL-1
ANTONIO ROMERO/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CITY OF CORCORAN
9-9-15 [[15](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Disposition: Continued to October 22, 2015, at 9:00 a.m. to allow the filing of a supplemental proof of service no later than 14 days prior to the date of the continued hearing along with a notice of continued hearing using the notice procedure of LBR 9014-1(f)(2)

Order: Civil Minute Order

RULE 9013

The motion must set forth the relief or order sought. Fed. R. Bank. P. 9013. In a motion requesting relief that by its nature directly affects another party's rights, an unambiguously named respondent is an essential component of the type of relief requested. The court cannot grant adversarial relief in the abstract where the respondent's identity is unknown or ambiguous.

The motion identifies two respondents: the City of Corcoran (motions title and body) and Select Portfolio Servicing, Inc. (see prayer for relief). But because the declaration is clear and the plan attached as an exhibit identifies the City of Corcoran in Class 2, the court infers that the respondent is City of Corcoran and that the naming of Select Portfolio Servicing, Inc. was an inadvertent error.

SERVICE

Service upon a state or local governmental agency or entity must be made pursuant to Rule 7004(b)(6) or Federal Rule of Civil Procedure 4(j). Fed. R. Bankr. P. 7004(b)(6); Fed. R. Civ. P. 4(j), *incorporated by* Fed. R. Bankr. P. 7004(a). Rule 7004(b)(6) permits service upon such an entity to be made by first class mail addressed "to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction

of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Fed. R. Bankr. P. 7004(b)(6). Subsection (a) of section 416.50 of the California Code of Civil Procedure provides that "[a] summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Civ. Proc. Code § 416.50(a). Subsection (b) of this section defines a "public entity" to include "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state." *Id.* § 416.50(b).

Alternatively, service may be made pursuant to Federal Rule of Civil Procedure 4(j)(2). Fed. R. Civ. P. 4(j)(2), *incorporated by* Fed. R. Bankr. P. 7004(a). This rule allows service to be made by delivering a copy of the summons and of the complaint to the public entity's chief executive officer or by following state law requirements for serving process on such a defendant. *Id.*

Here, the proof of service shows that the motion was mailed by both first class and certified mail to the City of Corcoran to the attention of "Agent or Officer authorized to Receive Service of Process." The court would prefer that service be effectuated by first class mail sent to the City Clerk, the City Manager, and the Mayor of the City of Corcoran.

MERITS

At the continued hearing, if service has been properly effectuated on the City of Corcoran, and no opposition has been filed, then the court will grant the motion on the merits. The senior lien of Wells Fargo Home Mortgage exceeds the value of the collateral described in the motion, and based on the collateral value given in the motion, the lien of respondent City of Corcoran is wholly unsecured.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to October 28, 2015. No later than October 14, 2015, the movant shall file a supplemental proof of service along with a notice of continued hearing using the notice procedure of LBR 9014-1(f)(2).

18. [11-14278](#)-A-12 MANUEL/MARY BARCELOS MOTION TO MODIFY CHAPTER 12
WW-7 PLAN
MANUEL BARCELOS/MV 8-27-15 [[57](#)]
RILEY WALTER/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 12 Plan

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

Disposition: Granted and modification approved

Order: Prepared by the movant and approved as to form and content by the chapter 12 trustee

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 debtor requests approval of a modification of his chapter 12 plan. The modification will only allow the debtor to pay off the amounts due under the plan early. See 11 U.S.C. § 1229(a)(2). The modification will not decrease the amount any creditor will receive. Mot. at ¶ 10.

The plan's term is 60 months. So the modification decreasing the originally confirmed plan's term by an early payoff remains consistent with § 1229(c). The modification will be approved.

19. [14-14681](#)-A-13 GERALD RISENHOOVER MOTION TO DISMISS CASE
MHM-1 8-7-15 [[25](#)]
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [15-13381](#)-A-13 JOSEPH DIAZ
MR-1
JOSEPH DIAZ/MV
MATIN RAJABOV/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
9-10-15 [[16](#)]

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.*

The court infers that the debtor's hospitalization has ended and that such circumstances have changed so that another dismissal will not occur. In the future, counsel for the debtor shall provide more factual detail about what has changed since the dismissal of the prior case that would make it more likely for the present case, in which the stay is to be extended, more likely to succeed. The motion will be granted except as to any creditor without proper notice of this motion.

21. [13-15583](#)-A-13 THOMAS MARINEZ
MHM-2
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO DISMISS CASE
8-7-15 [[34](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to October 28, 2015, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c) (1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1050.

The debtor has not opposed the motion. But a modified plan has been filed in this case on September 22, 2015. The hearing on the modification is October 28, 2015. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the trustee's motion to dismiss is continued to October 28, 2015, at 9:00 a.m.

22. [15-12984](#)-A-13 DEBBIE/ROY BISHOP

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-1-15 [[25](#)]

Tentative Ruling

If the installment fee in the sum of \$79 which was due August 27, 2015, has not been paid by the time of the hearing, the case will be dismissed without further notice or hearing.

23. [11-18392](#)-A-13 RAYMOND/SANDRA GUILLEN MOTION TO DISMISS CASE
MHM-1 8-6-15 [[38](#)]
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [12-60092](#)-A-13 GARY/CHRISTINA STAHL MOTION TO DISMISS CASE
MHM-2 8-7-15 [[39](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [14-15493](#)-A-13 DANIEL/LYDIA WILLIAMS MOTION TO DISMISS CASE
MHM-1 8-12-15 [[19](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [14-13396](#)-A-13 NOAH/GENEVA FARR MOTION TO DISMISS CASE
MHM-2 8-7-15 [[66](#)]
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$10,547.28.

The debtors' opposition does not dispute the delinquency but instead states the debtors' intention to file a modified plan that will pay all unsecured creditor claims now on file with the court in full and early (the plan's term will be 11 months). But the court has not identified the modified plan on its docket.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. Nor is a modified plan in prospect when none has been filed at this time. The court is unable to deny the motion given the outstanding delinquency and the lack of a modified plan in prospect.

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 motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

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. Payments are delinquent in the amount of \$10,547.28. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

27. [14-14397](#)-A-13 GERALD/JESSICA HOAG
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO DISMISS CASE
8-7-15 [[25](#)]

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 \$800.

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. Payments are delinquent in the amount of \$800. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.