

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 6th Floor
Courtroom 34, Department A
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: SEPTEMBER 24, 2019
CALENDAR: 11:00 A.M. CHAPTERS 13

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. [18-20004](#)-A-13 **IN RE: JALON/MIRANDA HARRISON**
[JCK-8](#)

MOTION TO MODIFY PLAN
8-12-2019 [\[105\]](#)

KATHLEEN CRIST

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.

2. [19-21005](#)-A-13 **IN RE: ELINOR BANKS**
[LRR-3](#)

MOTION TO CONFIRM PLAN
8-1-2019 [[60](#)]

LEN REIDREYNOSO
LEN REIDREYNOSO/ATTY. FOR MV.

No Ruling

3. [19-21005](#)-A-13 **IN RE: ELINOR BANKS**
[RDG-3](#)

CONTINUED MOTION TO DISMISS CASE
8-13-2019 [[65](#)]

LEN REIDREYNOSO
RESPONSIVE PLEADING

Tentative 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 \$2,088.00.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The 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.

4. [18-21606](#)-A-13 **IN RE: PHILLIP/KIMBERLY ORTIZ**
[JCK-2](#)

CONTINUED MOTION TO INCUR DEBT
8-9-2019 [\[46\]](#)

KATHLEEN CRIST

Final Ruling

Motion: Approve New Debt [Vehicle Loan]

Notice: LBR 3015-1(h)(1)(A); no written opposition required

Disposition: Continued to October 22, 2019

Order: Prepared by moving party

This motion will be continued to October 22, 2019 at 10:00 a.m.

Not later than October 8, the debtor shall file amended Schedules I and J.

5. [19-23718](#)-A-13 **IN RE: JAMES SHROPSHIRE**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-16-2019 [\[34\]](#)

KATHLEEN CRIST
JENNIFER WANG/ATTY. FOR MV.
FORD MOTOR CREDIT COMPANY, LLC VS.

Final Ruling.

The motion is denied without prejudice. Counsel of the movant has recycled docket control number "JHW-1" in violation of local rules. LBR 9014-1(c) (requiring unique docket control numbers for each motion).

Originally, "JHW-1" was used to object to object to plan confirmation. See Objection, July 18, 2019, ECF16. It was used again in conjunction with prosecution of a stay relief motion as to a 2018 Nissan NV200, July 11, 2019, ECF21. And it has now been used

a third time in conjunction with the motion for stay relief as to a 2018 Ford Transit.

Counsel for the movant is cautioned that future failures to comply with local rules may result in summary denial of the relief requested and/or an order to show cause for sanctions (requiring a personal appearance in by Sacramento). The court will issue a civil minute order.

6. [19-22519](#)-A-13 **IN RE: CURTIS/BIANCA PERNICE**
[JCK-2](#)

OBJECTION TO CLAIM OF GENEVA CAPITAL, LLC, CLAIM NUMBER 15
7-31-2019 [[41](#)]

KATHLEEN CRIST
RESPONSIVE PLEADING

No Ruling

7. [19-22519](#)-A-13 **IN RE: CURTIS/BIANCA PERNICE**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-27-2019 [[53](#)]

KATHLEEN CRIST
JENNIFER WANG/ATTY. FOR MV.
ACAR LEASING LTD VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Chevrolet Colorado

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).

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause shown, including lack of adequate protection to the trustee and creditors. 11 U.S.C. § 362(d)(1). The debtor is obligated to make payments to the moving party pursuant to a lease agreement by which the debtor leases the

vehicle described above. The debtor has defaulted under such lease agreement as 2.9 postpetition lease payments are past due.

Schedules A/B indicate that the debtor has a leased 2016 Chevrolet Silverado pickup. The plan (ECF4, confirmed at ECF62) assumes the lease. See Chapter 13 plan Section 4.02, April 23, 2019.

The plan requires that the debtor make preconfirmation adequate protection payments. Section 4.01 of the plan states: "Debtor shall pay directly to the other party to the executory contract or unexpired lease, before and after confirmation of this plan and whether or not a proof of claim is filed, all post-petition monthly payments required by the lease or contract." The debtor has not done so, and is now delinquent \$1,150.35. See Rangel" decl. para. 6, August 27, 2019, ECF56.

Moreover, on August 15, 2019, the debtor has surrendered the vehicle to the creditor. See Rangel decl. para. 7, August 27, 2019, ECF56.

Notwithstanding the binding nature of a chapter 13 plan, *United Student Aid Funds, Inv. V. Espinosa*, 559 U.S. 260, 272-275 (2010), the court finds cause and will grant the motion.

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.

ACAR Leasing Ltd.'s motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 2016 Chevrolet Colorado, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

8. [18-26123](#)-A-13 **IN RE: TIMOTHY GARRY**
[SMJ-5](#)

CONTINUED MOTION TO CONFIRM PLAN
7-22-2019 [[71](#)]

SCOTT JOHNSON
RESPONSIVE PLEADING

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 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). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

9. [19-21327](#)-A-13 **IN RE: JAVIER/JAMIE SILVA**
[JCK-2](#)

MOTION TO CONFIRM PLAN
7-31-2019 [[43](#)]

KATHLEEN CRIST

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 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). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

10. [19-21229](#)-A-13 **IN RE: MELISSA ELIZABETH SIMPSON**
[RDG-2](#)

MOTION TO DISMISS CASE
9-10-2019 [\[40\]](#)

TARAS KURTA

Tentative Ruling

Objection: Objection to Motion

Notice: LBR 3015-1(c); no written opposition required

Disposition: Continued to October 22, 2019

Order: Civil minute order if appropriate

This motion will be continued to October 22, 2019 at 1:00 p.m., to be heard in conjunction with the debtor's motion to confirm her Second Amended Chapter 13 plan.

11. [19-24136](#)-A-13 **IN RE: CARMELITA/DANILO CARVAJAL**
[LTF-1](#)

MOTION TO CONFIRM PLAN
8-13-2019 [\[21\]](#)

LARS FULLER

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 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). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

12. [14-31344](#)-A-13 **IN RE: SANTIAGO/ARGELIA CAMPERO**
[HWW-4](#)

MOTION TO MODIFY PLAN
8-20-2019 [\[53\]](#)

HANK WALTH

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.

13. [19-23047](#)-A-13 **IN RE: ROBERT/SOPHIA BLANTON**
[RDG-4](#)

MOTION TO DISMISS CASE
9-10-2019 [\[40\]](#)

NICHOLAS WAJDA

Tentative 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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

Trustee stated the debtor failed to confirm a plan, and unreasonably delayed the process in a way prejudicial to the creditors. The case has been pending since May 13, 2019, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

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. The court hereby dismisses this case.

14. [19-22750](#)-A-13 **IN RE: DEBRA ROY**
[MKM-2](#)

MOTION TO CONFIRM PLAN
8-18-2019 [[58](#)]

MICHAEL MOORE

Tentative 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).

The court is mindful that the debtor was delinquent under the terms of this proposed plan (ECF54). If the trustee confirms that the debtor is now current, the court will issue the following ruling.

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 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). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

15. [19-22750](#)-A-13 **IN RE: DEBRA ROY**
[RDG-4](#)

CONTINUED MOTION TO DISMISS CASE
8-12-2019 [[54](#)]

MICHAEL MOORE

No Ruling

16. [19-24251](#)-A-13 **IN RE: DONALD SANTEE AND MARY JACOBS**
[RDG-1](#)

MOTION TO DISMISS CASE
9-10-2019 [\[13\]](#)

ROBERT FONG

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

17. [19-24260](#)-A-13 **IN RE: CLIFFORD/SANDRA MAYHUGH**
[RDG-2](#)

MOTION TO DISMISS CASE
9-10-2019 [\[28\]](#)

FLOR DE MARIA TATAJE

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

18. [19-22062](#)-A-13 **IN RE: CLINTON WILLIAMS**
[JLL-1](#)

CONTINUED MOTION TO CONFIRM PLAN
7-2-2019 [\[29\]](#)

JENNIFER LEE
RESPONSIVE PLEADING

Final Ruling

The case having been dismissed, this matter will be denied as moot.

19. [19-22062](#)-A-13 **IN RE: CLINTON WILLIAMS**
[RDG-1](#)

CONTINUED MOTION TO DISMISS CASE
6-4-2019 [\[23\]](#)

JENNIFER LEE

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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

Trustee stated there has been unreasonable delay by the debtor that is prejudicial to the creditors, the debtor is delinquent of \$3000.00, and the debtor has failed to confirm a plan. In doing so, the debtor has unreasonably delayed the process in a way prejudicial to the creditors.

The court has ordered that not later than September 10, 2019, the debtor will convert or file a motion for continued administration, or appoint a personal representative (LBR 1016-1). See ECF41.

The debtor has not done so. The court will dismiss the case.

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. The court hereby dismisses this case.

20. [17-23068](#)-A-13 **IN RE: SILVIA QUIROGA**
[RJ-3](#)

MOTION TO AVOID LIEN OF GREATER CALIFORNIA FINANCIAL
SERVICES
8-22-2019 [\[54\]](#)

RICHARD JARE

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

Judicial Lien Avoided: \$7,413.44

All Other Liens: \$237,403.18

Exemption: \$1.00

Value of Property: \$150,000.00

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 respondent'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 respondent's judicial lien will be avoided entirely.

21. [19-24169](#)-A-13 **IN RE: ERNEST/CHARLENE LOCKMILLER**
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-26-2019 [[22](#)]

T. O'TOOLE

No Ruling

22. [18-21171](#)-A-13 **IN RE: EVERETT MARSHALL AND LYNETTE**
HASAN-MARSHALL
[HWW-2](#)

MOTION TO MODIFY PLAN
8-18-2019 [[113](#)]

HANK WALTH
RESPONSIVE PLEADING

No Ruling

23. [19-22676](#)-A-13 **IN RE: MARIA EDWARDS-RAMOS**
[RDG-2](#)

MOTION TO DISMISS CASE
9-10-2019 [[29](#)]

JENNIFER LEE

Tentative 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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

Trustee stated the debtor failed to confirm a plan, and unreasonably delayed the process in a way prejudicial to the creditors. The case has been pending for approximately 5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

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. The court hereby dismisses this case.

24. [19-24282](#)-A-13 **IN RE: JUAN/MARIA SALAS**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON TRUST, N.A.
8-23-2019 [[29](#)]

PETER MACALUSO
WENDY LOCKE/ATTY. FOR MV.

No Ruling

25. [19-24282](#)-A-13 **IN RE: JUAN/MARIA SALAS**
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-26-2019 [[32](#)]

PETER MACALUSO

No Ruling

26. [19-23385](#)-A-13 **IN RE: SHELDON/ANGIE SMITH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-3-2019 [\[39\]](#)

PETER MACALUSO

Order to Show Cause - installment has been paid

Final Ruling

The installment having been paid, the order to show cause is discharged. The case will remain pending.

27. [19-24885](#)-A-13 **IN RE: ANAMARIA MALDONADO**
[MKM-2](#)

CONTINUED MOTION TO VACATE DISMISSAL OF CASE
8-26-2019 [\[17\]](#)

MICHAEL MOORE
DEBTOR DISMISSED: 08/20/2019

No Ruling

28. [19-21286](#)-A-13 **IN RE: JAMES AZEVEDO**
[FF-4](#)

MOTION TO CONFIRM PLAN
8-19-2019 [\[66\]](#)

GARY FRALEY

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 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). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

29. [19-23389](#)-A-13 **IN RE: CHRISTINA MORONES**
[NLL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
8-7-2019 [[23](#)]

PETER MACALUSO
NANCY LEE/ATTY. FOR MV.
DEBTOR DISMISSED: 09/04/2019

Final Ruling

The case having been dismissed on September 4, 2019, the objection will be overruled as moot.

CIVIL MINUTES

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

U.S. Bank's Objection to Confirmation of Plan has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled.

30. [19-23390](#)-A-13 **IN RE: KAREEM SYKES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-3-2019 [[48](#)]

PETER MACALUSO
9/4/19 INSTALLMENT PAID \$80

Order to Show Cause - installment has been paid

Final Ruling

The installment having been paid, the order to show cause is discharged. The case will remain pending.

31. [19-22891](#)-A-13 **IN RE: VERNON/RHONDA SMITH**
[RDG-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-19-2019 [[46](#)]

MARK WOLFF

Tentative Ruling

Objection: Objection to Claim of Exemptions
Notice: 9014-1(f)(1); written opposition required
Disposition: Sustained
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).

Trustee stated that the debtors' claim of exemptions utilized under rules governing exemptions for private retirement plans. The debtors' exemption schedule exempts an annuity of \$200,000.00. Debtors have testified that funds received from the annuity represents a settlement, and not a retirement account. Further, the debtors' exemption for "02 shares of Five 9 corp" in the amount of \$4,800.00 is not to exempt private retirement plans.

LAW

West's Annotated California Codes make exemptions for private retirement plans. Protected are all amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan. C.C.P. 704.115(b).

DISCUSSION

The debtors have failed to make a valid claim for exemptions under C.C.P. 704.115(a)(1) and (2). C.C.P. 704.115 claims of exemptions are only valid if . Here, the court finds the \$200,000.00 annuity received as a settlement rather than as a retirement account. Further, the court does not find the debtors' exemption for "02 shares of Five 9 corp" in the amount of \$4,800.00 as to exempt private retirement plans. As a consequence, debtors have not shown a valid claim for exemptions.

CIVIL MINUTE ORDER

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

Trustee's Objection to Debtor's Claim of Exemptions has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is sustained.

32. [19-25391](#)-A-13 **IN RE: ROLAND BALDERAS**
[ADR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
9-6-2019 [[11](#)]

ANTHONY ROWE/ATTY. FOR MV.
GARY CHEEMA VS.

Final Ruling

Motion: Relief from Stay
Disposition: Denied without prejudice
Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process. A motion for relief from stay is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4001(a)(1), 9014(b). Under Rule 7004, service on an individual must be made by first class mail addressed to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(b)(1). A debtor in bankruptcy may be served before the case is dismissed or closed "at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b)(9).

Here, service of the motion was insufficient.

The motion and supporting papers were not served properly on the debtor.

Notice of Hearing (ECF13) line #28 states that a hearing will be held October 1, 2019 at 1:00 before Judge Jaime. The caption states the hearing will be on September 24, 2019 at 11:00 before Judge Jaime.

33. [19-24295](#)-A-13 **IN RE: STACY ESTANTINO**
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-26-2019 [[14](#)]

RICHARD KWUN

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

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.

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 chapter 13 trustee'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. The court denies confirmation of the chapter 13 plan.

34. [19-24315](#)-A-13 **IN RE: REGINALD/LYDIA BRAVO**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION
7-29-2019 [[15](#)]

PETER MACALUSO
AUSTIN NAGEL/ATTY. FOR MV.

No Ruling