

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: NOVEMBER 2, 2016
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [14-15909](#)-A-13 ALVARO/LILIA LOPEZ MOTION TO DISMISS CASE
MHM-3 9-12-16 [[57](#)]
MICHAEL MEYER/MV
NIMA VOKSHORI/Atty. for dbt.
OPPOSITION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [15-14411](#)-A-13 NICK/CHRISTINA NGIRAILILD MOTION TO MODIFY PLAN
PK-3 8-25-16 [[51](#)]
NICK NGIRAILILD/MV
PATRICK KAVANAGH/Atty. for dbt.

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 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.

3. [16-12618](#)-A-13 PAUL/JACKIE PENA MOTION TO DISMISS CASE
MHM-1 9-9-16 [[21](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.

4. [16-12720](#)-A-13 FRED/KAREN FRANK MOTION TO DISMISS CASE
MHM-1 9-12-16 [[18](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [16-12720](#)-A-13 FRED/KAREN FRANK OBJECTION TO CONFIRMATION OF
MHM-2 PLAN BY TRUSTEE MICHAEL H.
MEYER
10-6-16 [[24](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

6. [16-10744](#)-A-13 SYLVIA CASTRO MOTION TO DISMISS CASE
MHM-2 9-9-16 [[26](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$4084.00.

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 has been presented to the court. Having entered the default of the respondent debtor for failure to

appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

7. [16-13044](#)-A-13 CHASITY ARIAS
MHM-1
WILLIAM OLCOTT/Atty. for dbt.
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
10-6-16 [[16](#)]

No tentative ruling.

8. [16-12652](#)-A-13 FRANCES HARRIS
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE
9-12-16 [[18](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [16-12652](#)-A-13 FRANCES HARRIS
MHM-2
ROBERT WILLIAMS/Atty. for dbt.
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
10-6-16 [[24](#)]

No tentative ruling.

10. [15-11654](#)-A-13 ELLIOT BADGER AND BRENDA
RSW-3 VAQUERA
ELLIOT BADGER/MV
ROBERT WILLIAMS/Atty. for dbt.
- MOTION TO MODIFY PLAN
9-27-16 [[74](#)]

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 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.

11. [16-11354](#)-A-13 ODILON/SAURISARET OBJECTION TO DEBTOR'S CLAIM OF
MHM-3 PEREZ-FLORES EXEMPTIONS
MICHAEL MEYER/MV 10-3-16 [[87](#)]
PHILLIP MYER/Atty. for dbt.

Final Ruling

The objection will be overruled as moot given the filing of an amended Schedule C on October 3, 2016.

12. [16-11354](#)-A-13 ODILON/SAURISARET CONTINUED MOTION TO VALUE
PIM-2 PEREZ-FLORES COLLATERAL OF BAYVIEW LOAN
ODILON PEREZ-FLORES/MV SERVICING, LLC
8-23-16 [[67](#)]
PHILLIP MYER/Atty. for dbt.
CONTINUED PER ORDER #98

Final Ruling

Pursuant to order, ECF #98, the matter is continued to December 7, 2016, at 9:00 a.m.

13. [16-11354](#)-A-13 ODILON/SAURISARET CONTINUED MOTION TO CONFIRM
PIM-2 PEREZ-FLORES PLAN
ODILON PEREZ-FLORES/MV 8-23-16 [[70](#)]
PHILLIP MYER/Atty. for dbt.
CONTINUED PER ORDER #97

Final Ruling

Pursuant to order, eCF #97, the matter is continued to December 7, 2016, at 9:00 a.m.

14. [16-10357](#)-A-13 APRIL BLANDBURG
PK-1
APRIL BLANDBURG/MV
PATRICK KAVANAGH/Atty. for dbt.
DISMISSED

MOTION TO CONFIRM PLAN
8-24-16 [[71](#)]

Final Ruling

The case dismissed, the matter is dropped as moot.

15. [11-19860](#)-A-13 LOUIE/KATHRYN MONDRAGON
MHM-2
MICHAEL MEYER/MV

PHILLIP GILLET/Atty. for dbt.

OBJECTION TO CLAIM OF REAL TIME
RESOLUTIONS, INC, CLAIM NUMBER
15
9-6-16 [[56](#)]

Final Ruling

Objection: Objection to Claim No. QZ
Notice: LBR 3007-1(b)(1); written opposition required
Disposition: Sustained
Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

LEGAL STANDARDS

Deemed Allowance under § 502(a)

Section 502(a) provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). If properly executed and filed under the rules along with all supporting documentation that may be required, *see, e.g.,* Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. *See* Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

State Law on Waiver

With limited exceptions, § 502(b)(1) of the Bankruptcy Code means that “any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy.” *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

Under California state law, waiver can be asserted as a defense to a claim. “California courts will find waiver when a party intentionally relinquishes a right, or when that party’s acts are so inconsistent

with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." *Intel Corp. v. Hartford Acc. & Indem. Co.*, 952 F.2d 1551, 1559 (9th Cir. 1991) (citation omitted).

DISCUSSION

The respondent and claimant Real Time Resolutions, Inc., has returned funds received from the trustee and/or has communicated to the trustee in writing that the creditor has considered its claim satisfied. But until an objection to the claim is brought, the claim remains allowed. And the trustee must continue to pay all allowed claims consistent with the plan. § 502(a).

By its return of funds and/or written statements, the claimant has waived its right to receipt of any further amounts on its claim. These acts are highly inconsistent with an intent to enforce the right to any unpaid balance of the claim. This also creates an impossibility for the trustee to pay the allowed claim consistent with the trustee's duties.

Given the claimant's waiver of its right to receive any remaining balance of its claim, the court will liquidate the amount of the claim at the amount paid by the trustee to the claimant.

The claim will be allowed as: an unsecured claim in the amount of \$28,052.30. The remaining balance of the claim will be disallowed.

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 claim has been presented to the court. Having entered the default of the respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection to Claim No. 15 is sustained. The court liquidates the amount of the claim at the amount paid by the trustee on the claim. The claim will be allowed as an unsecured claim in the amount of \$28,052.30. The remaining balance of the claim will be disallowed.

16. [13-13660](#)-A-13 MICHAEL/VERONICA WHITE MOTION TO MODIFY PLAN
LKW-7 9-19-16 [[116](#)]
MICHAEL WHITE/MV
LEONARD WELSH/Atty. for dbt.
OPPOSITION

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 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.

17. [16-10162](#)-A-13 JUAN GARCIA - LOPEZ AND CONTINUED MOTION TO DISMISS
MHM-1 NICOLE GARCIA CASE
MICHAEL MEYER/MV 7-25-16 [[76](#)]
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [16-10162](#)-A-13 JUAN GARCIA - LOPEZ AND MOTION TO CONFIRM PLAN
PK-6 NICOLE GARCIA 8-24-16 [[95](#)]
JUAN GARCIA - LOPEZ/MV
PATRICK KAVANAGH/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. [14-12769](#)-A-13 ELEODORO/MARGARITA MOTION TO MODIFY PLAN
PK-1 VASQUEZ 8-31-16 [[60](#)]
ELEODORO VASQUEZ/MV
PATRICK KAVANAGH/Atty. for dbt.
OPPOSITION

No tentative ruling.

20. [14-12769](#)-A-13 ELEODORO/MARGARITA MOTION TO APPROVE LOAN
PK-2 VASQUEZ MODIFICATION
ELEODORO VASQUEZ/MV 10-12-16 [[72](#)]
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party according 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).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement or other declaratory relief. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

21. [14-13669](#)-A-13 TIMOTHY DAVIS AND CAITLYN MOTION TO INCUR DEBT
RSW-1 KENEFSKY 10-19-16 [[56](#)]
TIMOTHY DAVIS/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Approve Debtor's Incurring New Debt [Student Loan]

Notice: LBR 9014-1(f)(2); no 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). 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 seeks to incur new debt to pay for classes necessary to obtain her teaching credential. The first payment on the new debt will be due in January 2020. So the debtors argue that this loan will not affect their ability to pay their plan payment because the plan finishes in July 2019. The court will grant the motion, and the trustee will approve the order as to form and content.

22. [11-62772](#)-A-13 JOHN/BETH NEMETH
PWG-7
JOHN NEMETH/MV

PRETRIAL CONFERENCE RE:
OBJECTION TO CLAIM OF ANGEL
OLIVERA SALAS, CLAIM NUMBER 14
4-15-16 [[310](#)]

PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING, ORDER
#334

No tentative ruling.

23. [16-12776](#)-A-13 TOMMY KEELING
MHM-1
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.

MOTION TO DISMISS CASE
9-12-16 [[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).

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

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.

24. [16-10784](#)-A-13 ADAM AGCAOILI MOTION TO DISMISS CASE
MHM-1 9-12-16 [[53](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

This is the trustee's motion to dismiss for (1) failure to set a plan for hearing and (2) failure to confirm a chapter 13 plan. The debtor's case was converted August 6, 2016. A modified plan has been filed and set for hearing on December 7, 2016. The court will continue the hearing on this motion to coincide with the hearing on confirmation on December 7, 2016.

25. [16-12497](#)-A-13 VERONICA GRANADOS MOTION TO DISMISS CASE
MHM-1 9-9-16 [[20](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.