

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JANUARY 29, 2020
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

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

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

1. [19-14008](#)-A-13 **IN RE: MARY ROMERO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-27-2019 [\[28\]](#)

PHILLIP GILLET/ATTY. FOR DBT.
\$82.00 FINAL INSTALLMENT PAYMENT 1/6/2020

Final Ruling

The installment having been paid, the order to show cause is discharged. Furthermore, this case was dismissed on January 14, 2020.

2. [19-15029](#)-A-13 **IN RE: ERIC/LIZA LEE**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-10-2020 [\[15\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

No Ruling

3. [19-14744](#)-A-13 **IN RE: KENNETH/TRISTA CARTER**
[PLG-1](#)

MOTION TO CONFIRM PLAN
12-20-2019 [\[21\]](#)

KENNETH CARTER/MV
STEVEN ALPERT/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 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.

4. [19-15045](#)-A-13 **IN RE: JESUS VELEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-10-2020 [[15](#)]

STEVEN ALPERT/ATTY. FOR DBT.

Tentative 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.

The plan is not ready to be confirmed under 11 U.S.C. §§ 1325(a)(1), 521(a)(3). Schedule A/B states Debtor owns 100% interest in JV Trucking, LLC. ECF 1. Trustee contends that he has yet to receive documents he requested on December 4, 2019 regarding Debtor's interest in the LLC. Trustee also contends that Debtor testified in the 341 meeting on January 8, 2020 that he still operates the business. No assets or income are listed on the business on Schedules A/B, I, and 122C-1. Trustee is requesting the same documents a second time in this motion.

The plan does not appear to provide unsecured creditors what they would have been entitled to if this were a Chapter 7. 11 U.S.C. § 1325(a)(4). The plan provides for 0% payback to unsecured creditors. But Debtor has exempted his assets under C.C.P. § 703.140(b). A Debtor who has not filed jointly with his spouse may not claim an exemption under § 703.140(b), unless both spouses signed a waiver of all other exemptions allowed under state law other than § 703.140(b). C.C.P. § 703.140(a)(2). Debtor must provide the requested business documents to Trustee to determine whether the plan satisfies the best interests of creditors.

Also, Debtor's residence located in 4617 Gatson St, Bakersfield, CA is valued at \$300,000.00. Debtor claimed an exemption of \$1.00.

Schedule C, ECF 1. Schedule D says the property is secured by a consensual lien held by Shellpoint Mortgage in the amount of \$152,876.00. On December 16, 2019, Debtor provided the mortgage statement from January 17, 2019 listing the total amount due of \$77,787.67. Also, the property is secured by a consensual lien held by Chase Bank in the amount of \$162,462.00. On January 8, 2020, Chase Bank filed a secured claim in the amount of \$159,496.45. Claim 6-1. The total secured claims on the Gatson property are less than those listed on Schedule D, and there is nonexempt equity in the property of approximately \$21,000.00.

This plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtor did not file a statement for each property and business showing gross receipts, business expenses, and total monthly net income.

The plan does not provide for all of Debtor's projected disposable income under 11 U.S.C. § 1325(b). Debtor has not filed statements for each property and business. Schedules state that Debtor's LLC grosses around \$12,000.00 a month. Schedule I, ECF 1. Net income is \$5,500.00 a month. Line 5 of 122C-1, ECF 1. It appears that Form 122C-1 only includes Debtor's net business income; the form must be amended to list Debtor's gross business income of \$12,000.00 per month, per Schedule I. See *In re Wiegand*, 386 B.R. 238 (BAP 9th Cir. 2008). Once 122C-1 is amended, Debtor will be above median and must then also complete Form 122C-2.

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.

5. [19-15061](#)-A-13 **IN RE: MILDRED MARISCAL**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-10-2020 [[19](#)]

WILLIAM EDWARDS/ATTY. FOR DBT.

Tentative 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.

The plan is not ready to be confirmed under 11 U.S.C. § 1325(a)(1). Debtors have not appeared at the 341 hearing held on January 8, 2020. The continued meeting will be held on February 25, 2020 at 12:00 noon. Debtor must also provide the following documents to Trustee: i) Class 1 checklist and recent mortgage statement for the Class 1 creditor; ii) last filed tax return; iii) Authorization to release information. In addition, on December 4, 2019, the Trustee sent a document request letter to Debtor and Debtor's counsel requesting the following documents for any rental property: i) a list of rental income, month-by-month; ii) detailed expenses and copies of any rental agreements for the full six months prior to filing. Trustee has yet to receive the documents.

The plan does not provide for submission of all future earnings to Trustee as necessary to execute the plan under 11 U.S.C. § 1322(a). The plan is short \$189.46 a month to pay monthly dividends. Section 3.12 of the plan is blank.

The plan does not appear to provide unsecured creditors what they would have been entitled to if this were a Chapter 7. 11 U.S.C. § 1325(a)(4). Trustee has questions for the Debtor on several line items on Schedule A/B to be discussed at the continued 341 meeting.

This plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtor did not file a statement for each property and business showing gross receipts, business expenses, and total monthly net income. Also, the plan payment is \$2,336.63. Schedule J net income is \$750.00. ECF 1.

The plan does not provide for all of Debtor's projected disposable income under 11 U.S.C. § 1325(b). Debtor did not file a statement for each property and business showing gross receipts, business expenses, and total monthly net income.

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.

6. [18-14166](#)-A-13 **IN RE: DOUGLAS NEWHOUSE**
[DMG-6](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS
ATTORNEY(S)
1-8-2020 [[153](#)]

D. GARDNER/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, D. Max Gardner has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$7,517.00 and reimbursement of expenses in the amount of \$99.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

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

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

D. Max Gardner'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 \$7,517.00 and reimbursement of expenses in the amount of \$99.00. The aggregate allowed amount equals \$7,616.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$7,616.00 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

7. [19-13473](#)-A-13 **IN RE: CHRISTOPHER LOCASCIO**
[MHM-1](#)

CONTINUED HEARING RE: MOTION TO DISMISS CASE
12-3-2019 [[22](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

CASE DISMISSAL

The trustee moved to dismiss this chapter 13 case under § 1307(c)(1) solely for failure of Debtors to confirm a plan within a reasonable time. However, this plan having been confirmed (Item # 8), the court will deny trustee's motion to dismiss.

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 denied.

8. [19-13473](#)-A-13 **IN RE: CHRISTOPHER LOCASCIO**
[RSW-1](#)

MOTION TO CONFIRM PLAN
12-23-2019 [\[26\]](#)

CHRISTOPHER LOCASCIO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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 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. [19-14275](#)-A-13 **IN RE: TRACEY MARI**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-13-2020 [\[26\]](#)

SUSAN SALEHI/ATTY. FOR DBT.
1/14/20 FINAL INSTALLMENT PAID \$154

Final Ruling

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

10. [19-13685](#)-A-13 **IN RE: FRANK ANDRASEVITS**
[MHM-2](#)

MOTION TO DISMISS CASE
12-30-2019 [\[37\]](#)

MICHAEL MEYER/MV
JULIE MORADI-LOPES/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 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. The debtor has failed to confirm a plan within a reasonable time. 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.

11. [19-12897](#)-A-13 **IN RE: RAYMOND/CYNTHIA SANDERS**
[RSW-1](#)

MOTION TO CONFIRM PLAN
12-5-2019 [\[48\]](#)

RAYMOND SANDERS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
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 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. [19-11598](#)-A-13 **IN RE: BRIAN/MARIA PATRICK**
[DMG-1](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS
ATTORNEY(S)
1-7-2020 [[37](#)]

D. GARDNER/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, D. Max Gardner has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,689.00 and reimbursement of expenses in the amount of \$28.50.

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.

D. Max Gardner'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 \$3,689.00 and reimbursement of expenses in the amount of \$28.50. The aggregate allowed amount equals \$3,757.50. As of the date of the application, the applicant held a retainer in the amount of \$40.00. The amount of \$3,757.50 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

13. [19-13473-A-13](#) **IN RE: CHRISTOPHER LOCASCIO**
 [CJK-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-23-2019 [\[32\]](#)

ROUNDPOINT MORTGAGE SERVICING
CORPORATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHRISTINA O/ATTY. FOR MV.

No Ruling