

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: MARCH 2, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g. nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-20401](#)-A-13 **IN RE: RAFAEL QUIROZ**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-11-2021 [\[10\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

2. [20-25104](#)-A-13 **IN RE: MARTIN/LINDA GLASENAPP**
[SS-3](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT,
WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE
ADMINISTRATION, AS TO JOINT DEBTOR
2-16-2021 [\[63\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.

Tentative Ruling

Motion: Continued Administration; Waiver of Requirement to File §
1328 Certifications

Notice: LBR 9014-1(f)(2); trustee's non-opposition filed

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

The debtor Martin Glasenapp prays for continued administration of
the case and waiver of the § 1328 certification for his now deceased
spouse Linda Glasenapp.

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a
Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been
closed, a **Notice of Death of the debtor [Fed. R. Civ. P.
25(a), Fed. R. Bankr. P. 7025]** shall be filed within
**sixty (60) days of the death of a debtor by the counsel
for the deceased debtor or the person who intends to be
appointed as the representative for or successor to a
deceased debtor.** The Notice of Death shall be served on
the trustee, U.S. Trustee, and all other parties in
interest. **A copy of the death certificate (redacted as
appropriate) shall be filed as an exhibit to the Notice
of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a),
incorporated by Fed. R. Bank. P. 7025, 9014(c).

Here, the debtor has properly filed Notice of Death of Co-Debtor Linda Glasenapp, ECF No. 66.

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.**

Fed. R. Bankr. P. 1016 (emphasis added).

The surviving debtor Martin Glasenapp was and is the primary income earner in the household, and his income is sufficient to make payments under the proposed plan, Exhibit B, ECF No. 66; see Plan, ECF No. 37. Mr. Glasenapp is current under the proposed plan. Therefore, further administration will be allowed.

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

CIVIL MINUTE ORDER

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

The surviving debtor's motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is the motion is granted; and

IT IS FURTHER ORDERED that (1) as to surviving debtor Martin Glasenapp continued administration is appropriate; (2) as to

deceased debtor Linda Glasenapp the certifications required by 11 U.S.C. § 1328 are waived.

3. [20-24713](#)-A-13 **IN RE: BONITA BROOKS**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-28-2021 [\[36\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(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 motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof. Further, the preponderance-of-the-evidence standard applies. *See In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

C.C.P. 704.070

Section 522 of Title 11 allows a debtor (1) to exempt property under § 522(d), unless a state does not so authorize, or (2) to exempt property under state or local law and federal law other than § 522(d). *Id.* § 522(b)(2)-(3)(A), (d). California has opted out of the federal exemption scheme. *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); *accord* 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

Under California exemption law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure ("special bankruptcy exemptions") or they may elect the regular set

of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) ("regular non-bankruptcy exemptions"). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)-(3).

The debtor here elected to exempt property in Schedule C under C.C.P. § 704, ECF No. 1. The debtor however improperly exempted the equity in a "Possible Refund of Trustee payments made prior to dismissal consisting of paid earnings" in the amount of \$5,500.00 under C.C.P. 704.070, Schedule C, line 30.1, ECF No. 1. C.C.P. § 704.070 is to exempt paid earnings. C.C.P. § 704.070 is to exempt paid earnings. The debtor is not employed by the trustee, nor does the trustee pay the debtor in any capacity as an employee. Therefore, the funds exempted are not "paid earnings." The debtor therefore did not satisfy her burden of showing she has properly exempted the foregoing asset under C.C.P. § 704.070. For the foregoing reasons, this objection will be sustained.

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 objection to claim of exemptions 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 objection,

IT IS ORDERED that the objection is sustained.

4. [20-24814](#)-A-13 **IN RE: AMELIA MADRIGAL**
[DPC-2](#)

MOTION TO DISMISS CASE
2-1-2021 [\[45\]](#)

MARK SHMORGON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Chapter 13 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).

DELINQUENCY

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. Payments under the proposed plan are delinquent in the amount of \$ \$1,065.00. Another payment of \$355.00 is due before the hearing. Therefore, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case.

CASE PENDING WITHOUT FILED PLAN

The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 4.5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. Cause exists under § 1307(c)(1) to dismiss the case.

TAX-FILING REQUIREMENTS

Section 1308 of the Bankruptcy Code provides: "Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a).

The debtor has failed to comply with this tax-filing requirement. The debtor failed to file tax returns for tax years 2017 - 2019. The Meeting of Creditors was continued. At the continued Meeting of Creditors, the debtor's attorney advised that the debtor no longer intends to move forward with the case. The court will dismiss this 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 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 court hereby dismisses this case.

5. [19-24217](#)-A-13 **IN RE: BRETT BAILEY**
[SMJ-1](#)

MOTION TO MODIFY PLAN
1-21-2021 [\[38\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

6. [18-21824](#)-A-13 **IN RE: MICHAEL ZENDER**
[TJW-4](#)

CONTINUED MOTION FOR ORDER TO DISBURSE FUNDS REALIZED FROM
THE SALE OF REAL PROPERTY
12-3-2020 [\[70\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

No Ruling

7. [21-20025](#)-A-13 **IN RE: HAROLD DEAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-9-2021 [\[18\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
2/17/2021 INSTALLMENT FEE PAID \$79

Final Ruling

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

8. [20-23434](#)-A-13 **IN RE: TAMARA GEREN**
[DPC-2](#)

MOTION TO DISMISS CASE
2-2-2021 [\[48\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.

Final Ruling

Since this motion has been withdrawn, ECF No. 59, the court will
drop this matter from the calendar.

9. [20-23635](#)-A-13 **IN RE: CAROL ANDRESEN**
[DPC-2](#)

MOTION TO DISMISS CASE
1-28-2021 [\[67\]](#)

STEELE LANPHIER/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 7 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.

10. [21-20052](#)-A-13 **IN RE: CONSUELO MORRISON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-12-2021 [\[19\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

11. [20-24756](#)-A-13 **IN RE: EDGAR MANDAP**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-1-2021 [\[41\]](#)

MARK SHMORGON/ATTY. FOR DBT.
MARK BLACKMAN/ATTY. FOR MV.
KINECTA FEDERAL CREDIT UNION VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Ram 3500

Value: \$43,892.00

Liens: \$64,305.09

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).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 3 pre-petition filings totaling \$2,899.53 and 1 postpetition payment of \$1,933.02 are past due.

Alternatively, because the plan which has not been confirmed does not provide for the surrender of the subject property that secures the moving party's claim, ECF No. 2, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Kinecta Federal Credit Union'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 2018 Ram 3500, 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.

12. [19-26165](#)-A-13 **IN RE: KIMBERLY BRADLEY**
[GAL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-4-2021 [\[23\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
GARRY MASTERSON/ATTY. FOR MV.
FARMERS NATIONAL BANK VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Ford Explorer

Value: \$24,000.00

Liens: \$32,049.66

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).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 1 pre-petition payment of \$457.78 and 16 postpetition payments totaling \$7,324.48 are past due.

Alternatively, because the plan which has been confirmed does not provide for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Farmers National Bank'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 Ford Explorer, 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.

13. [20-23870](#)-A-13 **IN RE: DARRELL/ELIZABETH KEITH**
[DPC-2](#)

MOTION TO DISMISS CASE
2-1-2021 [[23](#)]

BRUCE DWIGGINS/ATTY. FOR DBT.

No Ruling

14. [20-25170](#)-A-13 **IN RE: GREGORY KRUZONA**
[KLG-1](#)

MOTION TO CONFIRM PLAN
1-15-2021 [\[19\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

L.B.R. 2016-1(c)(1)

Under L.B.R. 2016-1(c)(1), the maximum fee that may be charged by the debtor's attorney is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases. Here Section 3.05 of the plan identifies that the debtor's attorney opted into L.B.R. 2016-1(c)(1), Plan, ECF No. 22. However, the plan also states that the attorney has received \$1,000.00 pre-filing, and subject to court approval will receive additional fees of \$3,500.00 through the plan, Plan, § 3.05; see Statement of Rights and Responsibilities, ECF No. 3. \$4,500.00 is \$500.00 more than is allowed for individual cases under L.B.R. 2016-1(c)(1). The debtor's schedules reflect that the debtor has been self-employed for Uber and Lyft for a month, ECF No. 1, but the debtor has not shown that this case qualifies as a business case under L.B.R. 2016-1(c)(1).

Unless the debtor amends the Statement of Rights and Responsibilities, ECF No. 3, and Section 3.05 of the plan regarding attorney's compensation, ECF No. 22, so that they comply with L.B.R. 2016-1(c)(1), the court cannot confirm this chapter 13 plan.

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 confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

15. [21-20070](#)-A-13 **IN RE: BENIGNA GONZALEZ AND JESUS MONROY**
[MOH-1](#)

MOTION TO VALUE COLLATERAL OF WESTLAKE SERVICES, LLC
2-16-2021 [\[26\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

No Ruling

16. [19-24273](#)-A-13 **IN RE: CHRISTINE CROWNOVER**
[CK-2](#)

MOTION TO MODIFY PLAN
1-27-2021 [\[42\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

11 U.S.C. § 1325(a)(6)

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). 11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan be feasible and that the debtor is able to comply with its terms.

Here the IRS is placed in Class 2(B), ECF No. 45. The nonstandard provisions of the plan provide “The Debtor is in the process of negotiating with the IRS to enter into a stipulation paying a portion of the secured claim for tax years 2014 thru 2018, with the

agreement that the Debtor will continue making payments to the IRS after her discharge until the tax claim is paid in full," *Id.* The motion indicates the debtor is working with the IRS on a stipulation to continue payments after completion of the plan, ECF No. 42. The debtor's declaration indicates she has signed the stipulation with the IRS, ECF No. 44. However, the stipulation (filed as Exhibit B, ECF No. 46) is not signed by the debtor but appears electronically signed by a specialist for the IRS. Also, the plan provides for the IRS on a pro rata basis rather than a monthly basis. The stipulation states, "The modified plan will provide for payment of over half of the secured portion of the IRS claim leaving not more than \$25,250.00 remaining to be paid," but then also offers payments on a pro rata basis, Exhibit B, ECF No. 46. Without a monthly dividend for the IRS, the debtor has not shown the plan will be feasible or that the plan will pay according to the stipulation. The court will deny modification under § 1325(a)(6).

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 modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies modification of the chapter 13 plan.

17. [20-24277](#)-A-13 **IN RE: ELIZABETH ROHDE**
[DPC-1](#)

MOTION TO DISMISS CASE
2-2-2021 [\[31\]](#)

YASHA RAHIMZADEH/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Chapter 13 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).

DELINQUENCY

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. Payments under the proposed plan are delinquent in the amount of \$ \$1,039.72. Another payment of \$1,039.72 will also be due before the hearing. Cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case.

CASE PENDING WITHOUT FILED PLAN

The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 6 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. Cause exists under § 1307(c)(1) to dismiss the case. 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 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 court hereby dismisses this case.

18. [19-24685](#)-A-13 **IN RE: EMILIA ARDELEAN**
[CLH-5](#)

MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
1-29-2021 [[141](#)]

STEPHAN BROWN/ATTY. FOR DBT.
CINDY HILL/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

19. [19-24685](#)-A-13 **IN RE: EMILIA ARDELEAN**
[TBG-2](#)

CONTINUED MOTION TO CONFIRM PLAN
10-11-2019 [\[37\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

20. [20-25492](#)-A-13 **IN RE: MARIA DEL SOCORRO/RENE ORTIZ**
[ETW-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-15-2021 [\[23\]](#)

PETER MACALUSO/ATTY. FOR DBT.
EDWARD WEBER/ATTY. FOR MV.
YULI HU VS.; RESPONSIVE PLEADING

No Ruling

21. [20-25492](#)-A-13 **IN RE: MARIA DEL SOCORRO/RENE ORTIZ**
[PGM-1](#)

MOTION TO CONFIRM PLAN
1-26-2021 [\[35\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

11 U.S.C. § 521

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). At the meeting of the creditors, the trustee requested that the Voluntary Petition

be amended to list a previous case #20-24979. To date, no amendment has been filed.

The debtor has failed to provide the trustee with a required federal tax return (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 foregoing reasons, the court will deny confirmation of the plan.

IMPROPER SERVICE

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that AT&T Corp, AT&T Mobility, Carter Glahn, and Kohl's @ Peritus Portfolio Services II, LLC have not received notice.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

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 confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

22. [19-24294](#)-A-13 **IN RE: ANGELA KENT**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-28-2021 [\[24\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
HOME POINT FINANCIAL VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 8616 Ria Formosa Way, Elk Grove, California 95757

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).

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as 6 postpetition payments totaling \$3,477.63 are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Home Point Financial'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 8616 Ria Formosa Way, Elk Grove, California 95757, 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.

23. [18-20390](#)-A-13 **IN RE: THOMAS/SAMMY BOONE**
[PLC-4](#)

MOTION TO CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS
TO BOTH DEBTORS O.S.T.
2-18-2021 [\[58\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.

No Ruling