

**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:** MARCH 6, 2019  
**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. [19-10502](#)-A-13     **IN RE: ISAAC NIETO**  
[AF-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
2-18-2019    [[9](#)]

ISAAC NIETO/MV  
ARASTO FARSAD

**No Ruling**

2. [19-10009](#)-A-13     **IN RE: MATTHEW REGPALA**  
[PK-2](#)

MOTION TO VALUE COLLATERAL OF TD BANK  
2-8-2019    [[24](#)]

MATTHEW REGPALA/MV  
PATRICK KAVANAGH

**Final Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

3. [18-15013](#)-A-13     **IN RE: RUBEN/MARIA GARCIA**  
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.  
1-17-2019    [\[18\]](#)

WELLS FARGO BANK, N.A./MV  
PATRICK KAVANAGH  
WENDY LOCKE/ATTY. FOR MV.  
DISMISSED 2/10/19

**Final Ruling**

The case dismissed, the objection will be overruled as moot.

4. [18-14825](#)-A-13     **IN RE: JOSE/SELENA DE LA GARZA**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-25-2019    [\[30\]](#)

CREDIT ACCEPTANCE  
CORPORATION/MV  
RICHARD STURDEVANT  
SHERYL ITH/ATTY. FOR MV.

**Final Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because the case is being dismissed, pursuant to the trustee's motion to dismiss on this calendar (ECF No. 24), the automatic stay

will no longer exist. Accordingly, the court is unable to grant effective relief from stay. This motion will be denied as moot.

5. [18-14825](#)-A-13 IN RE: JOSE/SELENA DE LA GARZA  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-18-2019 [[24](#)]

MICHAEL MEYER/MV  
RICHARD STURDEVANT

### **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 chapter 13 trustee moves to dismiss this chapter 13 case because of a delinquency in payments under the debtor's proposed chapter 13 plan, for failure to file a section 521(a)(1)(B)(v) statement (Schedule I, item 8(a) attachment), and failure to provide the trustee with payment advices or other evidence of payment received within 60 days pre-petition (November paystubs are missing).

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 \$896. The debtors have also failed to file a section 521(a)(1)(B)(v) statement and provide the trustee with payment advices for November 2018. This case was filed on November 30, 2018.

### **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 and because of the failure to file a section 521(a)(1)(B)(v) statement and provide the trustee with payment advices for November 2018. The court hereby dismisses this case.

6. 18-13343-A-13     **IN RE: EUGENE/ANDREA WILLIAMS**  
LKW-4

MOTION FOR COMPENSATION FOR LEONARD K. WALSH, DEBTORS  
ATTORNEY(S)  
2-13-2019    [54]

LEONARD WELSH

#### **Tentative Ruling**

**Application:** Allowance of First 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, Law Offices of Leonard Welsh has applied for an allowance of a first interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5,207.50 and reimbursement of expenses in the amount of \$28.90.

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.

Law Offices of Leonard Welsh'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 \$5,207.50 and reimbursement of expenses in the amount of \$28.90. The aggregate allowed amount equals \$5,236.40. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5,236.40 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. [18-13845](#)-A-13     **IN RE: CURTIS ROSS**  
[MHM-3](#)

MOTION TO DISMISS CASE  
1-29-2019    [\[42\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Denied

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, citing 11 U.S.C. § 1307(c)(1)&(3), § 521, and Fed. R. Bankr. P. 1007.

The debtor opposes dismissal.

At the time this motion was filed, the debtor had not set a hearing on the confirmation of his amended chapter 13 plan, had not filed a complete and accurate Schedule J, and had not filed Form 122C-1.

However, since the motion was filed, the debtor has corrected all deficiencies raised by the motion. Hearing on the confirmation for the debtor's amended plan is set on this calendar, March 6. ECF No. 47. Amended Schedules I and J were filed on February 20. ECF No. 53. And Form 122C-1 was filed on February 21. ECF No. 57. Accordingly, dismissal will be denied.

#### **75-DAY ORDER**

Nevertheless, the court will enter a 75-day order on plan confirmation.

A chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 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 considered the motion, any oppositions or replies, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion to dismiss is denied.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

8. [18-13845](#)-A-13     **IN RE: CURTIS ROSS**  
[RSW-1](#)

MOTION TO CONFIRM PLAN  
1-30-2019    [\[46\]](#)

CURTIS ROSS/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

**No Ruling**

9. [18-14146](#)-A-13     **IN RE: JULIAN/GLORIA TORRES**  
[NSV-1](#)

MOTION TO CONFIRM PLAN  
1-30-2019    [\[40\]](#)

JULIAN TORRES/MV  
NIMA VOKSHORI

**Final Ruling**

Given the pendency of a motion to dismiss by the trustee in this case, set to be heard on March 22, 2019, the court will continue the hearing on this motion to March 28, 2019 at 9:00 a.m.

10. [18-14853](#)-A-13     **IN RE: JERRICK/SANDRA BLOCK**  
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE  
1-24-2019    [\[14\]](#)

JERRICK BLOCK/MV  
ROBERT WILLIAMS

**Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle 2013 Chevrolet Malibu]

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

**Disposition:** Granted

**Order:** Civil minute order

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



## **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2013 Chevrolet Malibu. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$7,725.

## **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value collateral consisting of a motor vehicle 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 personal property collateral described as a 2013 Chevrolet Malibu has a value of \$7,725. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7,725 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

11. [18-14254](#)-A-13     **IN RE: JOSEPH CLEVINGER**  
[RSW-1](#)

MOTION TO AVOID LIEN OF STATE FARM BANK, F.S. B.  
2-1-2019    [\[30\]](#)

JOSEPH CLEVINGER/MV  
ROBERT WILLIAMS

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Judicial Lien Avoided:** \$3,785.83

**All Other Liens:** \$241,601.63

**Exemption:** \$100,000

**Value of Property:** \$225,572

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

12. [18-13657](#)-A-13     **IN RE: MARTINA DUL**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-28-2019    [[51](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case because the debtor has failed to present to the trustee her social security card, authenticating her identification in this case.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and § 521(h) to dismiss the case. The debtor has repeatedly failed to present her social security card to the trustee. The debtor failed to present the card at the October 9, 2018 meeting of creditors. The debtor failed to present the card at the December 11, 2018 meeting of creditors. The debtor failed to present the card at the January 15, 2019 meeting of creditors. The trustee concluded the meeting on January 15.

While the court understands that the debtor's identification documents were stolen and the debtor has been having trouble obtaining a new social security card promptly, in part due to the partial shut-down of the federal government in December 2018 and January 2019, there has been unreasonable delay that is prejudicial to creditors, establishing cause for dismissal.

As the meeting of creditors has been concluded already and this case has been pending since September 6, 2018, for over six months, without a confirmed plan, cause for dismissal exists.

Additionally, presenting the social security card at the March 6 hearing on this motion is not the same as presenting it at a meeting of creditors because the debtor will not be sworn in at the March 6 hearing.

### **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 considered the motion and any oppositions or replies,

IT IS ORDERED that the motion is granted because of the debtor's failure to provide the trustee with her social security card at three meetings of creditors held by the trustee. The court hereby dismisses this case.

13. [18-14763](#)-A-13     **IN RE: ADRIENNE WIGGINS**  
[LKW-1](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS  
ATTORNEY(S)  
2-11-2019    [[18](#)]

LEONARD WELSH

#### **Tentative Ruling**

**Application:** Allowance of First 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, Law Offices of Leonard Welsh has applied for an allowance of a first interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$1,227.50 and reimbursement of expenses in the amount of \$3.50.

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.

Law Offices of Leonard Welsh'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 \$1,227.50 and reimbursement of expenses in the amount of \$3.50. The aggregate allowed amount equals \$1,231. As of the date of the application, the applicant held a retainer in the amount of \$1,274. The amount of \$1,231 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.

14. [18-14765](#)-A-13     **IN RE: EDWARD GUTIERREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-4-2019    [[33](#)]

DISMISSED 2/7/19

### **Final Ruling**

The case dismissed, the order to show cause will be discharged as moot.

15. [18-14765](#)-A-13     **IN RE: EDWARD GUTIERREZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-17-2019    [[28](#)]

MICHAEL MEYER/MV  
DISMISSED 2/7/19

**Final Ruling**

The case dismissed, the motion will be denied as moot.

16. [18-14166](#)-A-13     **IN RE: DOUGLAS NEWHOUSE**  
[DMG-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF BANK OF AMERICA,  
N.A.  
12-10-2018    [[28](#)]

DOUGLAS NEWHOUSE/MV  
D. GARDNER  
RESPONSIVE PLEADING

**Final Ruling**

At the request of the parties (Joint Status Report, ECF No. 94), the matter will be continued to March 22, 2019, at 9:00 a.m., in Fresno.

17. [18-14166](#)-A-13     **IN RE: DOUGLAS NEWHOUSE**  
[MHM-4](#)

MOTION TO DISMISS CASE  
1-28-2019    [[75](#)]

MICHAEL MEYER/MV  
D. GARDNER  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this case because the debtor did not confirm a plan within 45 days of the meeting of creditors, as required by 11 U.S.C. § 1324(b).

However, section 1324(b) only requires that a "hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors." The provision does not require actual confirmation of the plan within 45 days of the meeting of creditors.

The initial meeting of creditors was held on December 11, 2018. A hearing on Bank of America's plan confirmation objection was held on January 9, 2019, within the 45-day period. ECF No. 56. Accordingly, section 1324(b) was satisfied.

The debtor filed another plan and a motion to confirm it, on February 6, 2019, set for a hearing on March 22, 2019. ECF Nos. 82 & 85.

Accordingly, dismissal will be denied.

#### **75-DAY ORDER**

Nevertheless, the court will enter a 75-day order on plan confirmation.

A chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 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 this chapter 13 case has been presented to the court. Having considered the motion, any oppositions or replies, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion to dismiss is denied without prejudice.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

18. [18-14668](#)-A-13     **IN RE: JOE CORREA**  
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO  
BANK, N.A.  
1-3-2019    [[13](#)]

WELLS FARGO BANK, N.A./MV  
ROBERT WILLIAMS  
WENDY LOCKE/ATTY. FOR MV.

**No Ruling**

19. [17-14682](#)-A-13     **IN RE: SCOTT DOYLE**  
[RSW-4](#)

MOTION TO MODIFY PLAN  
1-11-2019    [[75](#)]

SCOTT DOYLE/MV  
ROBERT WILLIAMS

**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.

20. [18-14383](#)-A-13     **IN RE: LAWRENCE HORTON**  
[PLG-1](#)

MOTION TO CONFIRM PLAN  
1-7-2019    [[23](#)]

LAWRENCE HORTON/MV  
RABIN POURNAZARIAN

### **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.

21. [18-14884](#)-A-13     **IN RE: PEDRO DUARTE**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-18-2019    [[24](#)]

MICHAEL MEYER/MV  
GARY SAUNDERS

### **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 chapter 13 trustee moves to dismiss this chapter 13 case because of the debtor's failure to: file a complete and accurate Schedule A/B and plan, listing and taking into account undisclosed bank accounts he testified having at the 341 meeting; and provide the trustee with a completed Class 1 Checklist (no late fee listed).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and LBR 3015-1(b)(6) to dismiss the case. The debtor failed to file a complete and accurate Schedule A/B and plan, listing and taking into account undisclosed bank accounts, and failed to provide the trustee with a completed Class 1 Checklist.

### **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 failure to file complete and accurate Schedule A/B and plan and to provide the

trustee with a completed Class 1 checklist. The court hereby dismisses this case.

22. [18-14892](#)-A-13 IN RE: NICHOLAS ANGELICA  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-25-2019 [[49](#)]

MICHAEL MEYER/MV  
PATRICK KAVANAGH

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case because the debtor has failed to provide the trustee with his December 6, 2018 paystubs. This case was filed on December 7, 2018.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and § 521(a)(1)(B)(iv) to dismiss the case. The debtor has not provided the trustee with all payment advices or other evidence of payment received within 60 days before the filing of the petition, including paystubs dated December 6, 2018. This is cause for dismissal under section 1307(c)(1). The motion will be granted and the case will be dismissed.

### **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 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 because of the debtor's failure to provide the trustee with all payment advices or other evidence of payment received within 60 days before the filing of the petition. The court hereby dismisses this case.

23. [18-14892](#)-A-13     **IN RE: NICHOLAS ANGELICA**  
[PK-3](#)

MOTION TO CONFIRM PLAN  
1-18-2019    [[35](#)]

NICHOLAS ANGELICA/MV  
PATRICK KAVANAGH

**No Ruling**

24. [18-14892](#)-A-13     **IN RE: NICHOLAS ANGELICA**  
[PK-4](#)

OBJECTION TO CLAIM OF FRONTWAVE CREDIT UNION, CLAIM NUMBER 5  
1-22-2019    [[42](#)]

NICHOLAS ANGELICA/MV  
PATRICK KAVANAGH  
WITHDRAWN

**Final Ruling**

The objection withdrawn, the hearing is dropped as moot.

25. [19-10562](#)-A-13     **IN RE: THOMAS SMITH**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
2-26-2019    [[11](#)]

THOMAS SMITH/MV  
SCOTT LYONS  
OST 2/25/19

**Tentative Ruling**

**Motion:** Extend the Automatic Stay

**Notice:** LBR 9014-1(f)(3); no 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). 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).

**EXTENSION OF THE STAY**

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case

that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

#### **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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

26. [19-10559](#)-A-13     **IN RE: LINDA FORD**  
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
2-26-2019    [[14](#)]

LINDA FORD/MV  
PETER BUNTING  
OST 2/27/19

#### **Tentative Ruling**

**Motion:** Extend the Automatic Stay  
**Notice:** LBR 9014-1(f)(3); no 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). 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).

### **EXTENSION OF THE STAY**

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

### **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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.