

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY: FRIDAY**

**DATE: MARCH 9, 2018**

**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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**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. [17-14301](#)-A-13     **IN RE: HARRY/CHERRY COLES**  
[TCS-2](#)

MOTION TO CONFIRM PLAN  
1-25-2018    [[34](#)]

HARRY COLES/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

**No Ruling**

2. [17-14507](#)-A-13     **IN RE: BULMARO ITURBIDE AND ELENA CABALLERO**  
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-22-2018    [[27](#)]

THOMAS GILLIS  
WITHDRAWN

**Final Ruling**

The objection withdrawn, the matter is dropped as moot.

3. [17-14608](#)-A-13     **IN RE: ERIC/AMY CAMPBELL**  
[SL-2](#)

MOTION TO CONFIRM PLAN  
1-26-2018    [[41](#)]

ERIC CAMPBELL/MV  
SCOTT LYONS  
RESPONSIVE PLEADING

**Final Ruling**

The case converted to chapter 7, the matter is dropped as moot.

4. [18-10415](#)-A-13     **IN RE: TERRILL/SUSAN COX**  
[SLC-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
2-27-2018    [[22](#)]

TERRILL COX/MV  
TERRILL COX/ATTY. FOR MV.  
NO OST

**Final Ruling**

An order has been entered denying this motion for insufficient notice, ECF #28. The hearing is dropped as moot.

5. [17-13418](#)-A-13     **IN RE: GENE/ADRIENNE SMITH**  
[DMG-1](#)

MOTION TO CONFIRM PLAN  
1-24-2018    [[55](#)]

GENE SMITH/MV  
D. GARDNER  
RESPONSIVE PLEADING

**No Ruling**

6. [17-14518](#)-A-13     **IN RE: EFREN/AMALIA ROJAS**  
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-23-2018    [[33](#)]

THOMAS GILLIS

**No Ruling**

7. [17-14818](#)-A-13     **IN RE: CLINTON/CYNTHIA RUTHERFORD**  
[MHM-1](#)

MOTION TO DISMISS CASE  
2-7-2018    [[35](#)]

MICHAEL MEYER/MV  
JERRY LOWE  
DISMISSED

#### **Final Ruling**

The case dismissed, the matter is dropped as moot.

8. [17-14529](#)-A-13     **IN RE: BRIAN FOLLAND**  
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-22-2018    [[35](#)]

DAVID JENKINS

#### **No Ruling**

9. [10-19042](#)-A-12     **IN RE: LUIS/MARIA SOTO**  
[TOG-16](#)

OBJECTION TO CLAIM OF BAC HOME LOANS SERVICING, LP, CLAIM  
NUMBER 15-1  
1-19-2018    [[200](#)]

LUIS SOTO/MV  
THOMAS GILLIS

#### **Final Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(1); written opposition required

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

*TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Debtors object to Claim 15-1 in the amount of \$194,724.79. This claim amends Claim 12-1 showing a balance of \$189,857.16.

Claim 12-1 was originally filed by BAC Home Loans Servicing LP. Two transfers of claim were filed, and now creditor Wilmington Savings Trust Society, FSB (Wilmington) holds the claim.

Debtors and Wilmington have entered into a claim-treatment stipulation. Pursuant to this stipulation, Wilmington shall have a secured claim of \$185,500 amortized over 30 years at 5.87 percent per annum, with the remainder of its claim treated as unsecured.

Because of the stipulation, the difference between Claim 12-1 and 15-1 affects only the unsecured claim held by Wilmington. Wilmington states that the difference between Claim 12-1 and 15-1 is only \$4,867.63. Because this difference affects only its unsecured claim on which it may be paid about 10%, Wilmington has filed a non-opposition to the sustaining of the objection to Claim 15-1.

Accordingly, the court will sustain the objection to Claim 15-1 and disallow it in its entirety.

10. [12-19355](#)-A-13     **IN RE: PHELIX SELLERS**  
[MHM-5](#)

MOTION TO DISMISS CASE  
2-2-2018    [[70](#)]

MICHAEL MEYER/MV  
SCOTT LYONS

### **Final Ruling**

The trustee and the debtor's counsel have stipulated to continue the hearing on this matter to April 12, 2018. The court will continue the hearing on this matter to April 12, 2018, at 9:00 a.m.

11. [17-14855](#)-A-13     **IN RE: GREGG/WENDY SCHOFIELD**  
[MHM-2](#)

MOTION TO DISMISS CASE  
2-7-2018    [[24](#)]

MICHAEL MEYER/MV  
PETER BUNTING

### **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 for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2,120.

### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

12. [15-13058](#)-A-13     **IN RE: JUAN/VERONICA LOPEZ**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-2-2018    [[45](#)]

NATIONSTAR MORTGAGE LLC/MV  
THOMAS GILLIS  
JOHN SCHLOTTER/ATTY. FOR MV.

**Final Ruling**

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

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

Here, service of the motion was insufficient. The motion and supporting papers were not served on the debtor.

If service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). The proof of service does not indicate service was made on the debtors' attorney.

13. [17-14566](#)-A-13     **IN RE: RONALD OSBURN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
2-7-2018    [[41](#)]

MICHAEL MEYER/MV  
JERRY LOWE  
DISMISSED

**Final Ruling**

The case dismissed, the matter is dropped as moot.

14. [17-13274](#)-A-13     **IN RE: SERGIO/MARLEAN BRAVO**  
[MSN-2](#)

MOTION TO SELL AND/OR MOTION TO PAY  
2-20-2018    [\[53\]](#)

SERGIO BRAVO/MV  
MARK NELSON

### **Tentative Ruling**

**Motion:** Sell Property [Real Property]

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

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to the instructions below and approved as to form and content by the Chapter 13 trustee

**Property:** 15651 North Avenue, Delhi, CA

**Buyer:** Terrance Craig Truax and Celina Marie Mancebo Truax

**Sale Price:** \$535,000

**Sale Type:** Private sale subject to overbid opportunity

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).

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.



15. [17-14888](#)-A-13     **IN RE: MARIO HERNANDEZ AND ROSALVA VILLEGAS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
2-7-2018    [[17](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

16. [18-10088](#)-A-13     **IN RE: CARL/DEBRA DEAN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
2-22-2018    [[21](#)]

MICHAEL MEYER/MV

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

#### **CASE DISMISSAL**

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

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

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

## **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

17. [16-10789](#)-A-13     **IN RE: PAUL/MARIA WILLIAMS**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-9-2018    [[107](#)]

HYUNDAI LEASE TITLING TRUST/MV  
JERRY LOWE  
AUSTIN NAGEL/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2015 Kia Optima

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**

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor was obligated to make payments to the moving party pursuant to a lease agreement by which the debtor leased the vehicle described above. The lease agreement reached maturity on August 27, 2017, and the debtor surrendered the vehicle to the movant.

On these facts, 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.

Hyundai Lease Titling Trust'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 a 2015 Kia Optima, 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.

18. [17-14892](#)-A-13     **IN RE: SALVADOR GARCIA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
2-7-2018    [[22](#)]

MICHAEL MEYER/MV  
PETER BUNTING  
RESPONSIVE PLEADING

**No Ruling**

19. [18-10096](#)-A-13     **IN RE: MARTIZA SANCHEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
2-22-2018    [\[18\]](#)

MICHAEL MEYER/MV

### **Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** LBR 9014-1(f)(2); 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). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **CASE DISMISSAL**

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

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

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

20. [17-13709](#)-A-13     **IN RE: CESAR CORTES AND NEREYDA OLEA**  
[TOG-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF TUCOEMAS FEDERAL  
CREDIT UNION  
12-30-2017    [[40](#)]

CESAR CORTES/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**Final Ruling**

The parties have resolved the matter by stipulation. The matter  
will be dropped from calendar.

21. [18-10487](#)-A-13     **IN RE: MARIA MIRANDA**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY

MARIA MIRANDA/MV  
SCOTT LYONS

**No Ruling**