

**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: MAY 2, 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. [16-13302](#)-A-13 **IN RE: LUIS ORTEGA AND NANCY NUNEZ**
[PK-5](#)

MOTION TO INCUR DEBT
4-11-2018 [[99](#)]

LUIS ORTEGA/MV
PATRICK KAVANAGH

Tentative Ruling

Motion: Approve New Debt [Mortgage Loan to Finance New Home Purchase]

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

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks to incur new debt to finance the purchase of a new home. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

2. [13-11803](#)-A-13 **IN RE: JERZY BARANOWSKI**
[PK-8](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
4-6-2018 [[224](#)]

PATRICK KAVANAGH

Tentative Ruling

Application: Allowance of Final 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, Patrick Kavanagh has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3500.00 and reimbursement of expenses in the amount of \$83.94. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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 a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

Patrick Kavanagh's application for allowance of final 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 a final basis. The court allows final compensation in the amount of \$3500.00 and reimbursement of expenses in the amount of \$83.94. The aggregate allowed amount equals \$3583.94. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3583.94 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

3. [14-15810](#)-A-13 **IN RE: PATRICIA VILLALOVOS**
[MHM-1](#)

CONTINUED OBJECTION TO DISCHARGE BY MICHAEL H. MEYER
2-28-2018 [\[50\]](#)

NEIL SCHWARTZ

Final Ruling

The court has ruled favorably on a motion in this case having docket control no. NES-2, so the trustee's objection is overruled as moot.

4. [14-15810](#)-A-13 **IN RE: PATRICIA VILLALOVOS**
[NES-2](#)

MOTION FOR SUBSTITUTION AND/OR MOTION FOR WAIVER OF THE
CERTIFICATION REQUIREMENTS FOR ENTRY OF DISCHARGE IN A
CHAPTER 13 CASE FOR DEBTOR
3-28-2018 [\[53\]](#)

PATRICIA VILLALOVOS/MV
NEIL SCHWARTZ

Final Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

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.

CONTINUED ADMINISTRATION OF THE CASE

Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f 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."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1016-1(b), the court will authorize further administration of this case.

SUBSTITUTION OF THE PROPER PARTY

Furthermore, the court will order substitution of the proper party. Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bankr. P. 7025; LBR 1016-1(b)(1). The court will substitute the debtor's surviving daughter, Lisa Farris, in the stead of the deceased debtor. The court will authorize this substituted person's service as the deceased debtor's representative.

ORDER INSTRUCTIONS

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. It is further ordered that the court finds that continued administration of the estate is possible and in the best interests of the parties. The court substitutes [surviving daughter's name] in the stead of the deceased debtor, and authorizes her service as the deceased debtor's representative."

5. [17-13317](#)-A-13 **IN RE: LORNA TREMBLE**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-27-2018 [[62](#)]

FORD MOTOR CREDIT COMPANY/MV
D. GARDNER
AUSTIN NAGEL/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

MOOTNESS OF REQUEST FOR STAY RELIEF

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 3. Class 3 secured claims are "secured claims satisfied by the surrender of collateral." Section 3.11(a) of the plan provides: "Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral"

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

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.

Ford Motor Credit Company's motion for relief from the automatic stay has been presented to the court. Having considered the motion, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is denied as moot. No relief will be awarded.

6. [13-16318](#)-A-13 **IN RE: ROGER/NICOLE PRATER**
[TGF-2](#)

MOTION FOR COMPENSATION FOR VINCENT A. GORSKI, DEBTORS
ATTORNEY(S)
3-30-2018 [[73](#)]

VINCENT GORSKI

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); 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). Written opposition to this application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Vincent A. Gorski has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$10,883.00 and reimbursement of expenses in the amount of \$0.00.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

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.

Vincent A. Gorski's application for allowance of final 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 a final basis. The court allows final compensation in the amount of \$10,883.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$10,883.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$10,883.00 shall be allowed as an administrative expense to be paid through the plan.

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. [18-10521](#)-A-13 **IN RE: REYNALDO/MELINDA GUTIERREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
4-3-2018 [[17](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

8. [18-10427](#)-A-13 **IN RE: MICHAEL/JOANNA COUCH**
[MHM-2](#)

MOTION TO DISMISS CASE
4-2-2018 [[19](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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 a required 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 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.

9. [18-10028](#)-A-13 **IN RE: SAMANTHA JOHNSON**
[MHM-2](#)

MOTION TO DISMISS CASE
3-2-2018 [[15](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

No Ruling

10. [18-10431](#)-A-13 **IN RE: WILLIAM HOLLEY**
[MHM-2](#)

MOTION TO DISMISS CASE
4-2-2018 [[18](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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).

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.

11. [18-10235](#)-A-13 **IN RE: FREDERICK/HAYLEY JAMES**
[MHM-2](#)

MOTION TO DISMISS CASE
4-2-2018 [[26](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [18-10737](#)-A-13 **IN RE: HERBERT KELLEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-5-2018 [[22](#)]

SUSAN SALEHI

Tentative Ruling

If the installment payments of \$79 due April 2, 2018, and \$77 due April 30, 2018, have not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

13. [16-13343](#)-A-13 **IN RE: AIDE/JAMES BLANCO**
[PK-8](#)

MOTION TO MODIFY PLAN
3-7-2018 [[149](#)]

AIDE BLANCO/MV
PATRICK KAVANAGH

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

14. [16-13343](#)-A-13 **IN RE: AIDE/JAMES BLANCO**
[PK-9](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
4-4-2018 [[162](#)]

PATRICK KAVANAGH

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); 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). Written opposition to this application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Patrick Kavanagh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$8,925.00 and reimbursement of expenses in the amount of \$0.00.

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

Fees in the First Case

The applicant has applied for fees for work in two separate cases filed by the same debtors. The first case was filed on August 6, 2016 and dismissed on August 26, 2016. The second case was filed September 13, 2016. The fees in this case cover both the first and the second cases.

Administrative expenses in a chapter 13 case include compensation and reimbursement awarded under § 330(a) of Title 11. Section 507(a)(2) refers to "administrative expenses allowed under § 503(b) of Title 11." Section 503(b)(2) authorizes compensation and reimbursement awarded under § 330(a) to be allowed as an administrative expense.

In a chapter 13 case, reasonable compensation may be allowed "to the debtor's attorney for representing the interests of the debtor in connection with **the bankruptcy case.**" The court concludes that this language unequivocally restricts compensation to services performed in connection with the case in which the fees are sought and not a prior case. The court cannot under any circumstances allow fees in this chapter 13 case for services the applicant has performed in a prior case involving the same debtors.

Fees in the Second Case

The applicant has reduced his fees by an amount that exceeds the amount allocable to the first case involving the same debtors. Accordingly, the court will allow the amount of fees requested solely for the services performed in the second case.

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.

Patrick Kavanagh'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 \$8,925.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$8,925.00. As of the date of the application, the applicant held a retainer in the amount of \$1,095.00. The

amount of \$6,830.00 shall be allowed as an administrative expense to be paid through the plan, the amount of \$1,095.00 shall be paid from the retainer held by the applicant, and the amount of \$1,000.00 may be paid directly by the debtor so long as it is paid before discharge is entered in the case. 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.

15. [18-10543](#)-A-13 **IN RE: CHARLES MASSEY**
[MHM-2](#)

MOTION TO DISMISS CASE
4-3-2018 [[18](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [18-11358](#)-A-13 **IN RE: LENIE MORALES**
[RSW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-18-2018 [[11](#)]

LENIE MORALES/MV
ROBERT WILLIAMS

Tentative Ruling

Motion: Extend the Automatic Stay

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). 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.

The present motion to extend the automatic stay has been presented to the court. 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.

17. [17-13263](#)-A-13 **IN RE: JASON/DANELLE BLACK**
[MHM-3](#)

MOTION TO DISMISS CASE
3-9-2018 [[113](#)]

MICHAEL MEYER/MV
D. GARDNER
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [17-14665](#)-A-13 **IN RE: VICKI/ANGELA VALENTYN**
[MHM-3](#)

MOTION TO DISMISS CASE
4-3-2018 [[31](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

Final Ruling

The trustee's motion was brought for failure to file Official Form 122C-2. Since the dismissal motion was filed, the debtors have filed this form. The motion will be denied as moot.

19. [16-10680](#)-A-13 **IN RE: CHRISTOPHER/AMANDA GONZALES**
[PK-1](#)

CONTINUED MOTION TO MODIFY PLAN
2-26-2018 [[29](#)]

CHRISTOPHER GONZALES/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

No Ruling

20. [17-14887](#)-A-13 **IN RE: VALENTIN CHOCOTECO**
[RSW-2](#)

CONTINUED MOTION TO CONFIRM PLAN
2-21-2018 [[28](#)]

VALENTIN CHOCOTECO/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

21. [15-13491](#)-A-13 **IN RE: FRED/PAMELA PITTS**
[RSW-1](#)

MOTION FOR SUBSTITUTION AS THE SUCCESSOR FOR DECEASED DEBTOR
AND/OR MOTION TO WAIVE THE FILING OF 1328 CERTIFICATE BY
DEBTOR ONLY , MOTION FOR CONTINUED ADMINISTRATION OF THE
CASE UNDER CHAPTER 13
3-23-2018 [\[52\]](#)

PAMELA PITTS/MV
ROBERT WILLIAMS

Final Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

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.

CONTINUED ADMINISTRATION OF THE CASE

Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f 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."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and

1016, and Local Bankruptcy Rule 1016-1(b), the court will authorize further administration of this case.

SUBSTITUTION OF THE PROPER PARTY

Furthermore, the court will order substitution of the proper party. Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bankr. P. 7025; LBR 1016-1(b)(1). The court will substitute the surviving joint debtor in the stead of the deceased debtor. The court will authorize the surviving joint debtor's service as the deceased debtor's representative.

ORDER INSTRUCTIONS

The operative provisions of the proposed order shall state the following: "It is ordered that the motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. It is further ordered that the court finds that continued administration of the estate is possible and in the best interests of the parties. The court substitutes [surviving debtor's name] in the stead of the deceased debtor, and authorizes the surviving joint debtor's service as the deceased debtor's representative."

The proposed order may contain additional language authorizing the joint debtor to file an affidavit of death of joint tenant. It may further authorize the transfer of any other property through probate only to joint debtor and no other parties.

22. [16-10794](#)-A-13 **IN RE: JASON/ANDREA THOMPSON**
[RSW-1](#)

MOTION TO MODIFY PLAN
3-13-2018 [\[27\]](#)

JASON THOMPSON/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 confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

23. [18-10499](#)-A-13 **IN RE: ALLAN BABB**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-23-2018 [[28](#)]

\$79.00 INSTALLMENT PAYMENT 4/9/18

Final Ruling

The installment having been paid, the order to show cause is discharged.

24. [18-10499](#)-A-13 **IN RE: ALLAN BABB**
[MHM-2](#)

MOTION TO DISMISS CASE
4-3-2018 [[33](#)]

MICHAEL MEYER/MV

Tentative 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 a required 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).

The debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

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.