

**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 8, 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-2](#)

MOTION TO CONFIRM PLAN  
3-2-2019    [\[18\]](#)

ISAAC NIETO/MV  
ARASTO FARSAD  
RESPONSIVE PLEADING

**No Ruling**

2. [19-10502](#)-A-13     **IN RE: ISAAC NIETO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-3-2019    [\[47\]](#)

MICHAEL MEYER/MV  
ARASTO FARSAD  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

3. [19-10503](#)-A-13     **IN RE: VALERIE LA COUR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-20-2019    [\[20\]](#)

DISMISSED 4/10/19

**Final Ruling**

The case dismissed, the matter is dropped as moot.

4. [19-10503](#)-A-13     **IN RE: VALERIE LA COUR**  
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOWD POINT MORTGAGE  
TRUST ASSET-BACKED SECURITIES SERIES 2016-1  
3-25-2019    [\[22\]](#)

TOWD POINT MORTGAGE TRUST  
ASSET-BACKED SECURITIES SERIES  
WENDY LOCKE/ATTY. FOR MV.  
DISMISSED 4/10/19

#### **Final Ruling**

The case dismissed, the matter is dropped as moot.

5. [19-11515](#)-A-13     **IN RE: KARL KENNEL**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
4-19-2019    [\[8\]](#)

KARL KENNEL/MV  
SCOTT LYONS

#### **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.

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.

6. [15-12017](#)-A-13     **IN RE: MICHAEL/TRISA GONZOLAS**  
[MHM-3](#)

MOTION TO DISMISS CASE  
4-5-2019    [[70](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

#### **No Ruling**

7. [18-13030](#)-A-13     **IN RE: JESUS PORTILLO-VAQUERO AND ELSA**  
GONZALEZ-PORTILLO  
[PK-6](#)

MOTION TO AVOID LIEN OF ACCLAIM TECHNOLOGIES  
3-28-2019    [[112](#)]

JESUS PORTILLO-VAQUERO/MV  
PATRICK KAVANAGH  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

8. [19-10030](#)-A-13     **IN RE: ALICE CAMERON**  
[MHM-2](#)

MOTION TO DISMISS CASE  
3-12-2019    [\[20\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, contending that the debtor did not file tax returns for 2015, 2016, 2017, and 2018 and has also not provided tax returns for those years to the trustee. The trustee had continued the meeting of creditors to March 19, in order to provide the debtor with the opportunity to remedy the deficiency. However, on March 25, after the March 19 meeting of creditors, the trustee filed an objection to plan confirmation, citing the same lack of filing tax returns as basis for denial of confirmation. The debtor has also not responded to this motion. This is cause for dismissal. 11 U.S.C. §§ 1307(c)(1), 1307(e), 1308(a); 521(e)(2)(A)&(B).

### **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 well-pleaded facts of the motion and the pleadings proffered by the respondent debtor in response to the motion, if any,

IT IS ORDERED that the motion is granted because of unreasonable delay by the debtor that is prejudicial to creditors and failure to file tax returns. The court hereby dismisses this case.

9. [19-10030](#)-A-13     **IN RE: ALICE CAMERON**  
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
3-25-2019    [\[24\]](#)

ROBERT WILLIAMS

**No Ruling**

10. [19-10438](#)-A-13     **IN RE: JOSE/JENNIFER RODRIGUEZ**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
3-22-2019    [\[14\]](#)

NEIL SCHWARTZ

**No Ruling**

11. [18-14445](#)-A-7     **IN RE: KONARK RANCHES, LLC**  
[PK-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-29-2019    [\[34\]](#)

KASSAB NIESHEIWAT/MV  
LEONARD WELSH  
PATRICK KAVANAGH/ATTY. FOR MV.  
OST, ECF NO. 33

**No Ruling**

12. [19-11351](#)-A-13     **IN RE: NORMA YANEZ**  
[PK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-10-2019    [\[16\]](#)

LORETTA HITCH/MV  
PATRICK KAVANAGH/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Conclude an Unlawful Detainer Action by Enforcing a Pre-petition Judgment for Possession; 362(d)(4) In Rem Relief

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

**Disposition:** Denied

**Order:** Civil minute order

**Subject & Remedy Sought:** Exercise state law rights and remedies to obtain possession of a real property located at 9909 Greenacres Dr. Bakersfield, California, including to conclude an unlawful detainer action and enforce a pre-petition judgment for possession; 362(d)(4) in rem relief

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).

### **FACTS**

The facts giving rise to the subject motion are as follows. Mak & Sons, a Nevada Corporation, purchased the real property in or about February 2015. Mak & Sons borrowed funds from Spartan Home Loans to finance the purchase. The funds borrowed from Spartan came from the movant. The debtor and an individual named Oracio Quezada were principals of Mak & Sons. They were not on the title deed and did not sign the corresponding note and deed of trust. The debtor signed the deed of trust only in her capacity as "President" of "Mak & Sons, Corporation," also labeled as the "Borrower." ECF Nos. 18 at 2 & 20 Ex. A.

In February 2016, a notice of default as to Mak & Sons' obligation on the loan was recorded with the Kern County Recorder. A notice of sale was recorded as to the property in June 2016. On July 6, 2016, Mak & Sons transferred the real property to Mak & Sons and Oracio Quezada, as joint tenants with a right of survivorship. ECF Nos. 18 at 2 & 20 Ex. C.

On July 7, 2016, Mr. Quezada filed a chapter 13 bankruptcy case. See Case No. 16-24432; ECF Nos. 18 at 2. The court takes judicial notice of that case pursuant to Fed. R. Evid. 201(c)(1).

In January 2017, the movant (identified as the beneficiary under the deed of trust in the notice of default) purchased insurance for the

real property, as there was no insurance protecting on the property. ECF Nos. 18 at 3 & 20 Ex. B.

Mr. Quezada's bankruptcy case was dismissed on August 21, 2017. He filed another chapter 13 bankruptcy case on August 23, 2017. See Case No. 17-25575; ECF No. 18 at 3. The court takes judicial notice of that case pursuant to Fed. R. Evid. 201(c)(1).

In December 2017, Mr. Quezada filed an adversary proceeding in the latter chapter 13 case against the lender/mortgagee and its agent, Spartan Mortgage Services, Inc. and Red Shield Servicing, Inc., correspondingly. See Adv. Proc. No. 17-2233; ECF No. 18 at 3. In the adversary proceeding, among other things, Mr. Quezada sought to permanently enjoin foreclosure of the property. The court takes judicial notice of the adversary proceeding pursuant to Fed. R. Evid. 201(c)(1). On November 15, 2018, the adversary proceeding was dismissed with prejudice via stipulation of the parties. ECF No. 18 at 3. The stipulation for dismissal appears to have arisen from a separate settlement with Mr. Quezada, entered into on October 31, 2018. Under that settlement, Mr. Quezada was paid \$1,200 in exchange for him agreeing "not [to] file any more claims." ECF No. 18 at 3.

After the movant gave the debtor in August 2018 a three-week foreclosure postponement, a foreclosure sale was held on August 22, 2018. As a result of the sale, the property reverted back to the beneficiary, i.e., the movant. ECF No. 18 at 3.

On September 25, 2018, a 90-day notice to vacate was posted on both homes on the property. ECF No. 18 at 3.

On November 29, 2018, the movant paid the taxes on the property, discovering in the process that there is \$13,000 in unpaid property taxes. ECF No. 18 at 3.

After the 90-day notice period expired and the occupants of the homes did not vacate them, the movant posted on December 28, 2018 a three-day notice to pay or quit. The movant commenced an unlawful detainer action on January 22, 2019. Defendants in the action included the debtor and Mr. Quezada. Mr. Quezada did not answer. The debtor answered. After a trial on February 28, 2019, the court entered on March 21, 2019 a judgment for possession of the property, against all occupants on the property. On the same day, the state court issued a writ of possession. ECF Nos. 18 at 4 & 20 Ex. D, E.

The property was set for a lock-out on April 3. However, the debtor filed this bankruptcy case on April 2. The lock-out was cancelled, as a result. ECF No. 18 at 4-5.

#### **RELIEF FROM THE AUTOMATIC STAY UNNECESSARY**

Initially, the debtor in this case has never owned an interest in the subject real property. It was only Mak & Sons and Mr. Quezada that owned an interest in the property prior to the foreclosure sale. And, it is the movant who owns the property as of the August 22, 2018 foreclosure sale.



Further, the debtor is not occupying the property under a lease or rental agreement either. There are no leases pertaining to the property listed in the debtor's Schedule G. The debtor has checked the box representing that she has no executory contracts or unexpired leases. ECF No. 31, Schedule G. Also, in the debtor's chapter 13 plan she proposes to pay a claim secured by the property, namely, the claim of Spartan Mortgage Services, Inc. ECF No. 33 at 3. She is not proposing to make lease or rental payments for her possession of the property.

Next, the movant obtained both a judgment for possession and a writ of possession for the property, pre-petition.

Hence, while the debtor may be in possession of the property, she has no legal or equitable rights to the property, including even equitable possession of the property.

We look to state law to determine property interests in bankruptcy proceedings. See *Butner v. United States*, 440 U.S. 48, 54-55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979). **We conclude that under California law, entry of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable possessory interests in the real property at issue.** See *Vella v. Hudgins*, 20 Cal.3d 251, 142 Cal.Rptr. 414, 572 P.2d 28, 30 (1977).

. . .

The flaw in the bankruptcy court's analysis is that the unlawful detainer proceedings under § 1161a are expressly designed to determine who has superior title to the property, including the right to immediate possession. See *Vella*, 142 Cal.Rptr. 414, 572 P.2d at 30. As a result, the prevailing party in the unlawful detainer proceeding under § 1161a has "better title" than the evicted resident. *In re Butler*, 271 B.R. at 871. The conclusion that the occupying resident retains an equitable possessory interest is inconsistent with § 1161a, which contemplates a final and binding adjudication of legal title and rights of immediate possession. See *Mortg. Guarantee Co.*, 50 P.2d at 836; see also *Vella*, 142 Cal.Rptr. 414, 572 P.2d at 30. **We therefore conclude that because Perl had no remaining interest in the property, legal or equitable, when the bankruptcy petition was filed, the bankruptcy court erred in concluding that Eden Place violated the automatic stay by executing the writ of possession.**

**The unlawful detainer judgment and writ of possession entered pursuant to California Code Civil Procedure § 415.46 bestowed legal title and all rights of possession upon Eden Place. See *Vella*, 142 Cal.Rptr. 414, 572 P.2d at 30. Thus, at the time of the filing of the bankruptcy petition, Perl had been completely divested of all legal and equitable possessory rights that would otherwise be protected by the automatic stay. See *id.* Consequently, the Sheriff's lockout did not violate the automatic stay because no legal or equitable**

**interests in the property remained to become part of the bankruptcy estate.** See *id.*; see also 11 U.S.C. § 541(a)(1) (describing the bankruptcy estate as consisting of “all legal or equitable interests of the debtor in property as of the commencement of the case”).

*Eden Place, L.L.C. v. Perl (In re Perl)*, 811 F.3d 1120, 1127–28, 1130 (9th Cir. 2016).

In other words, “when a debtor is completely divested of all legal and equitable rights in property prior to the filing of its petition, the automatic stay is inapplicable and there is no need for a creditor to seek relief from the automatic stay.” *Cty. of Imperial Treasurer-Tax Collector v. Stadtmueller (In re RW Meridian LLC)*, 564 B.R. 21, 28 (B.A.P. 9th Cir. 2017).

As the movant obtained a judgment for possession and writ of possession pre-petition, on March 21, with respect to all occupants on the property, including the debtor, the automatic stay does not protect the debtor and her current possession of the property. This case was not filed until April 2. Accordingly, as there is no automatic stay with respect to the debtor’s possession of the property, the request for prospective relief from stay to enforce the judgment for possession and execute on the writ of possession will be denied as unnecessary.

Nothing permits the court to issue an order confirming the absence of the automatic stay. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this motion does not implicate section 362(c). If the movant needs a declaration of rights, an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001(2).

#### **11 U.S.C. §§ 362(b)(22) and 362(1)**

Under 11 U.S.C. § 362(b)(22), the filing of a petition does not operate as a stay under § 362(a)(3) “of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor.” 11 U.S.C. § 362(b)(22).

Subsection (b)(22) of § 362 is subject to § 362(1), which provides that:

(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that--

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise

to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)--

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)--

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify--

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

Despite the inapplicability of the automatic stay, the debtor checked the box on question 11 of her petition, indicating that she rents her residence. ECF No. 1 at 3. The debtor also filled out the required section 362(l) certification (Initial Statement About an Eviction Judgment Against You), indicating that she rents her residence, that the movant is her landlord, and that under applicable nonbankruptcy law she has the right to stay in the property by paying her landlord "the entire delinquent amount." ECF No. 9. The debtor also indicates that she has given the court a deposit for the rent that would be due to the landlord during the 30 days after the filing of the petition. *Id.*

However, as established above, the movant was not and is not the debtor's landlord. The movant has been the owner of the property since its August 22, 2018 foreclosure sale. This was confirmed by the state court, when it awarded a judgment for possession to the movant. And, the debtor does not have a right to remain in the property by paying "the entire delinquent amount" to the movant, as there is no delinquent amount owed to the movant. See ECF No. 9.

In other words, section 362(b)(22) and section 362(l) are not implicated here because the underlying unlawful detainer action is **not** "by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement." 11 U.S.C. § 362(b)(22).

Even if sections 362(b)(22) and 362(l) were implicated, however, the debtor has not complied with their requirements. In order for section 362(b)(22) to be triggered 30 days post-petition, section 362(l) requires that:

the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

11 U.S.C. § 362(l)(1)(A)&(B) (emphasis added).

The debtor filed with the court the certification required by section 362(l) on April 2 (Initial Statement About an Eviction Judgment Against You). ECF No. 9. However, the court has seen no evidence of the debtor having served her alleged landlord with the certification. There is no proof of service on the docket of such notice. Thus, the alleged landlord cannot be reasonably expected to have notice of their right to object to the debtor's certification.

Accordingly, even if sections 362(b)(22) and 362(l) were applicable, the court is not convinced that the debtor has satisfied their requirements.

The court will order the clerk to return to the debtor the rent deposit she made with the court pursuant to the section 362(l) certification.

#### **11 U.S.C. § 362(d)(4)**

The court will deny section 362(d)(4) relief. Such relief is available only to creditors who are secured by the property. *Ellis v. Yu (In re Ellis)*, 523 B.R. 673, 678-80 (B.A.P. 9th Cir. 2014). The movant is not secured by the property. The movant is the owner of the property.

#### **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.

Loretta L. Hitch, Trustee of the Rick and Loretta L. Hitch Family 2009 Revocable Trust's motion for relief from the automatic stay has

been presented to the court. Having considered the motion and responses and/or replies, if any,

IT IS ORDERED that the motion is denied.

13. [18-14254](#)-A-13     **IN RE: JOSEPH CLEVINGER**  
[MHM-3](#)

MOTION TO DISMISS CASE  
3-8-2019    [\[38\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

#### **No Ruling**

14. [19-10256](#)-A-13     **IN RE: ARTURO SERRATO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
3-26-2019    [\[21\]](#)

MICHAEL MEYER/MV  
YELENA GUREVICH

#### **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 failed to appear at the meeting of creditors on March 19, 2019. The debtor also failed to provide the trustee with all pages of his most recent federal tax return. And, the debtor is delinquent \$2,450 under his proposed chapter 13 plan.

For the reasons stated in the motion, cause exists to dismiss the case. 11 U.S.C. § 1307(c)(1), (4), 521(e)(2)(A)&(B).

## **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.

15. [18-14763](#)-A-13     **IN RE: ADRIENNE WIGGINS**  
[LKW-2](#)

MOTION TO DISMISS CASE  
4-24-2019    [\[33\]](#)

ADRIENNE WIGGINS/MV  
LEONARD WELSH

### **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). 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 seeks dismissal of this case pursuant to 11 U.S.C. § 1307(b). The case has not been converted. 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 debtor's motion to dismiss has been presented to the court. Having considered the well-pleaded facts of the motion and considered responses to the motion, if any,

IT IS ORDERED that the motion is granted. The case is hereby dismissed.

16. [17-11264](#)-A-13     **IN RE: JUSTIN/KATHARINE FARMER**  
[PK-3](#)

MOTION TO MODIFY PLAN  
4-3-2019    [\[53\]](#)

JUSTIN FARMER/MV  
PATRICK KAVANAGH  
OPPOSITION WITHDRAWN

### **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.



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

MOTION TO CONFIRM PLAN  
3-26-2019    [[118](#)]

DOUGLAS NEWHOUSE/MV  
D. GARDNER  
RESPONSIVE PLEADING

**Final Ruling**

This motion is dropped from calendar, as the debtor has withdrawn this plan and has filed another modified plan, set for a confirmation hearing on June 13, 2019 at 9:00 a.m. ECF Nos. 136, 129, 130, 131.

18. [18-14768](#)-A-13     **IN RE: KIMBERLY KING- RICHARDSON**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
3-28-2019    [[42](#)]

MICHAEL MEYER/MV  
NEIL SCHWARTZ

**No Ruling**

19. [18-14569](#)-A-13     **IN RE: JESUS/FATIMA AYALA**  
[TCS-3](#)

MOTION TO VACATE DISMISSAL OF CASE  
4-26-2019    [[71](#)]

JESUS AYALA/MV  
TIMOTHY SPRINGER  
OST 4/29/19

**No Ruling**

20. [19-10569](#)-A-13     **IN RE: TOMMY FIELDS**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
4-10-2019    [[17](#)]

ROBERT WILLIAMS  
RESPONSIVE PLEADING

**No Ruling**

21. [19-10569](#)-A-13     **IN RE: TOMMY FIELDS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-10-2019    [[20](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS

**No Ruling**

22. [19-10569](#)-A-13     **IN RE: TOMMY FIELDS**  
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY REVERSE MORTGAGE  
SOLUTIONS, INC.  
3-26-2019    [[14](#)]

REVERSE MORTGAGE SOLUTIONS,  
INC./MV  
ROBERT WILLIAMS  
SEAN FERRY/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

23. [19-10570](#)-A-13     **IN RE: RICKEY/GALE AJOOTIAN**  
[PK-2](#)

MOTION TO VALUE COLLATERAL OF BMW FINANCIAL SERVICES  
3-20-2019    [\[26\]](#)

RICKEY AJOOTIAN/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 corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). "Thus, to meet the requirements of the Rules and comply with considerations of due process, a Rule 3012 motion (either with or without a plan) must be served on the affected creditors in accord with Rule 7004." *Millspaugh*, 302 B.R. at 102 (emphasis added); see also *In re Pereira*, 394 B.R. 501, 506-07 (Bankr. S.D. Cal. 2008) (Chapter 13 plan containing lien stripping proposal must be served on the affected creditor pursuant to Rule 7004). Rule 3012 notice alone will not suffice for the motion. See *Pereira*, 394 B.R. at 506.

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party. ECF No. 31.

The court also notes that the motion was not served on the secured creditor at the address reflected on the creditor's proof of claim. See POC 6-1; ECF No. 31. If the debtor resets this motion, it should be served at the address on the proof of claim as well.

24. [19-10373](#)-A-13     **IN RE: VERONICA TRUJILLO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
3-25-2019    [\[15\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case because the debtor failed to appear at the March 19, 2019 meeting of creditors. The debtor responded on April 2 that she will be appearing at the continued April 30 meeting.

However, the debtor did not appear at the April 30 meeting either. This is cause for dismissal. 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 well-pleaded facts of the motion and the pleadings proffered by the respondent debtor in response to the motion, if any,

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

25. [19-10681](#)-A-13     **IN RE: MARIA NINO**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER  
4-12-2019    [\[19\]](#)

MICHAEL MEYER/MV

**No Ruling**

26. [19-10385](#)-A-13     **IN RE: DEBRA FAWVER**  
[CJO-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CENLAR FSB  
3-26-2019    [\[26\]](#)

CENLAR FSB/MV  
PATRICK KAVANAGH  
CHRISTINA O/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

27. [19-10385](#)-A-13     **IN RE: DEBRA FAWVER**  
[MHM-1](#)

MOTION TO DISMISS CASE  
3-25-2019    [\[22\]](#)

MICHAEL MEYER/MV  
PATRICK KAVANAGH  
RESPONSIVE PLEADING

**No Ruling**

28. [19-10386](#)-A-13     **IN RE: JOSE RAMIREZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
3-25-2019    [\[23\]](#)

MICHAEL MEYER/MV  
MICHAEL AVANESIAN  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

29. [18-13295](#)-A-13     **IN RE: PATRICK/MARIBETH TABAJUNDA**  
[RSW-3](#)

MOTION TO MODIFY PLAN  
3-14-2019    [\[61\]](#)

PATRICK TABAJUNDA/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

**No Ruling**