

**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:** WEDNESDAY  
**DATE:** MAY 10, 2017  
**CALENDAR:** 9:00 A.M. CHAPTER 7 CASES

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**ORAL ARGUMENT**

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

**COURT'S ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [16-13301](#)-A-7 ERIC/RONDA KOZLOWSKI ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-14-17 [[128](#)]  
  
THOMAS ARMSTRONG/Atty. for dbt.  
\$181.00 FILING FEE PAID  
4/24/17

**Final Ruling**

The fee paid, the order to show cause is discharged.

2. [16-13301](#)-A-7 ERIC/RONDA KOZLOWSKI MOTION TO SELL FREE AND CLEAR  
RHT-3 OF LIENS  
ROBERT HAWKINS/MV 3-31-17 [[118](#)]  
THOMAS ARMSTRONG/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.  
LIMITED OPPOSITION

**No tentative ruling.**

3. [17-10518](#)-A-7 JATERICA SIMMONS OPPOSITION RE: TRUSTEE'S MOTION  
JES-1 TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
3-18-17 [[25](#)]

**Tentative Ruling**

**Motion:** Dismiss Case and Extend Trustee's Deadlines

**Notice:** LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

**Disposition:** Conditionally denied in part, granted in part

**Order:** Civil minute order

**DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at \*2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at a scheduled meeting of creditors under 11 U.S.C. § 341. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditors' meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

## EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will no longer be set at 60 days following the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

## CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for May 19, 2017, at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

4. [15-11838](#)-A-7      ERIC/LISA FRAMPTON      MOTION TO PAY  
JES-2      4-12-17 [[92](#)]  
JAMES SALVEN/MV  
PAUL JAMES/Atty. for dbt.

## Final Ruling

**Motion:** Allow Administrative Expense [Estate Taxes]

**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).

#### **ALLOWANCE OF ADMINISTRATIVE EXPENSE**

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Cloobek*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, federal and state taxes in the amount specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(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 chapter 7 trustee's motion for allowance of administrative expense 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 court allows \$5290 (federal taxes) and \$1010 (state taxes) as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

5. [16-13654](#)-A-7 JONATHAN/KATHERINE  
JES-1 DAVENPORT  
JAMES SALVEN/MV  
HAGOP BEDOYAN/Atty. for dbt.  
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
4-11-17 [[24](#)]

### **Tentative Ruling**

**Matter:** Objection to Claim of Exemption

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

### **APPLICABLE EXEMPTIONS**

The trustee objects to the applicability of 15 U.S.C. § 1673(a) and California Code of Civil Procedure § 706.050 to bankruptcy debtors in California. The trustee argues that these statutes are "levy limitation" sections and not exemptions that may be used in bankruptcy. The trustee further asserts that California's status as an opt-out state precludes use of federal exemption statutes such as 15 U.S.C. § 1673.

The trustee is wrong on this point. These sections are available to debtors in bankruptcy in California. The court will decide this dispute relying on both 15 U.S.C. § 1673 and C.C.P. section 706.050.

### Entire Body of Federal Exemption Law Applies Except for Section 522(d)

The fact that California is an opt-out state does not negate the applicability of federal exemptions that debtors in bankruptcy may claim, other than § 522(d). 11 U.S.C. § 522(b)(3).

Section 522(b)(3)(A) provides:

Property listed in this paragraph is--(A) subject to subsections (o) and (p), *any property that is exempt under Federal law, other than subsection (d) of this section*, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located . . . .

11 U.S.C. § 522(b)(3)(A) (emphasis added). Section 522(b)(3)(A) is the statute providing the scope of the exemptions available to debtors in California, and any other opt-out state.

A state's opt-out authority, under § 522(b)(2), extends only to the exemptions available under § 522(d). 11 U.S.C. § 522(b)(2). "A closer look at § 522(b)(2) provides an important clue regarding the scope of the states' 'opt-out' authority. As noted above, a debtor may select exemptions outlined in § 522(d) 'unless the [applicable state law] does not so authorize.' In other words, the so called opt-out provision only gives states the authority to restrict the access of debtors in bankruptcy to the slate of exemptions found in § 522(d). It does not grant states the authority to restrict access to exemptions

that would otherwise be available under § 522(b)(3).” *In re Antonie*, 432 B.R. 843, 850 (Bankr. D. Idaho 2010) (citation omitted), *aff’d*, 447 B.R. 610 (D. Idaho 2011).

California’s opt-out statute is consistent with this limitation on states’ opt-out authority. It provides: “Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 . . . , the exemptions set forth in subsection (d) of Section 522 of Title 11 . . . are not authorized in this state.” Cal. Civ. Proc. Code § 703.130.

In short, the Bankruptcy Code authorizes debtors to use the entire body of federal exemption law except for § 522(d) in an opt-out state such as California. 11 U.S.C. § 522(b)(3)(A).

#### Applicability of C.C.P. Section 706.050

Section 706.050 of the California Code of Civil Procedure likewise remains applicable in bankruptcy in California. The court agrees with the prior decision by Judge Rimel in this same court holding that § 703.140(a) does not preclude debtors in bankruptcy from choosing exemptions outside chapter 4, such as § 706.050, which is found in chapter 5 of Division 2, Title 9, Part 2. *In re Lantz*, No. 07-13481-A-7, 2009 WL 113729 (Bankr. E.D. Cal. 2009). The language in § 703.140(a) authorizing the § 703.140(b) exemptions to “be elected in lieu of all other exemptions provided by this chapter” only restricts debtors’ choice as between two sets of exemptions *within chapter 4* of Division 2, Title 9, Part 2 of the California Code of Civil Procedure. See Cal. Civ. Proc. Code § 703.140(a). It does not restrict debtors from choosing exemptions such as § 706.050 that are found in different chapters of the California Code of Civil Procedure.

Section 703.010 of the California Code of Civil Procedure supports this conclusion. This statute provides that “[t]he exemptions provided by this chapter *or by any other statute* apply to all procedures for enforcement of a money judgment.” Cal. Civ. Proc. Code § 703.010(a). This statute means that exemption statutes outside this chapter 4 remain applicable to debtors in California regardless of which exemption scheme they choose within chapter 4. See *id.*; 11 U.S.C. § 522(b)(3)(A).

#### **MATERIAL FACTUAL ISSUES**

Preliminarily, the court identifies the following disputed, material factual issues:

- (1) which debtor is entitled to the commission based on that debtor’s pre-petition services;
- (2) whether the debtor who earned the commission earned it as an employee or an independent contractor / self-employed person; see C.C.P. § 706.011(b) (restricting the definition of earnings in the WGL to compensation payable to an employee for personal services performed by such employee); see also Hon. Alan M. Ahart, *California Practice Guide: Enforcing Judgments and Debts* ¶ 6:1076 (rev. 2016); and
- (3) whether the amount has been calculated correctly pursuant to the exemption statutes listed.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow

the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

6. [17-10656](#)-A-7 JOSE DIAZ  
RHT-1

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
4-7-17 [[12](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Trustee's Deadlines

**Notice:** LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

**Disposition:** Conditionally denied in part, granted in part

**Order:** Civil minute order

### **DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at \*2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at a scheduled meeting of creditors under 11 U.S.C. § 341. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditors' meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

## **EXTENSION OF DEADLINES**

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will no longer be set at 60 days following the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

## **CIVIL MINUTE ORDER**

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for June 1, 2017, at 11:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).



7. [14-13661](#)-A-7 LAWRENCE GOWIN  
DRJ-5

MOTION FOR COMPENSATION FOR  
DAVID R. JENKINS, TRUSTEES  
ATTORNEY(S)  
3-28-17 [[66](#)]

### **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 7 case, David R. Jenkins, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$11,940.00 and reimbursement of expenses in the amount of \$68.76.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). 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.

David R. Jenkins'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 \$11,940.00 and reimbursement of expenses in the amount of \$68.76.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

8. [13-18085](#)-A-7 PROVISIONS FOOD COMPANY, MOTION FOR ADMINISTRATIVE  
JES-2 INC. EXPENSES  
JAMES SALVEN/MV 4-10-17 [[85](#)]  
DAVID JENKINS/Atty. for dbt.

### **Final Ruling**

**Motion:** Allow Administrative Expense [Estate Taxes]

**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).

### **ALLOWANCE OF ADMINISTRATIVE EXPENSE**

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Cloobek*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, estate taxes in the amount specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(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 chapter 7 trustee's motion for allowance of administrative expense 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 court allows California corporate franchise taxes of \$3733.79 as an administrative expense under 11 U.S.C. § 503(b) (1) (B).

9. [16-11289](#)-A-7 IMELDA AVILA MOTION TO SELL  
JES-2 4-3-17 [[45](#)]  
JAMES SALVEN/MV  
THOMAS GILLIS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2003 Ford F-150 and 1997 Toyota Corolla

**Buyer:** Debtor

**Sale Price:**

—2003 Ford F-150: \$3599 (\$1400 cash plus \$2199 exemption credit)

—1997 Toyota Corolla: \$1,101 (\$400 cash plus \$701 exemption credit)

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

Section 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). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a) (1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

10. [17-10294](#)-A-7 VERONICA/RAFAEL CHAVEZ  
ICE-1

MOTION TO CONVERT CASE FROM  
CHAPTER 7 TO CHAPTER 13  
4-25-17 [[17](#)]

IRMA EDMONDS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Convert Case from Chapter 7 to Chapter 13

**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).

Section 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.