

**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:** THURSDAY  
**DATE:** MAY 26, 2016  
**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 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. [15-13717](#)-A-13 BOBBY BLAIR  
MHM-2  
MICHAEL MEYER/MV  
RICHARD STURDEVANT/Atty. for dbt.

MOTION TO DISMISS CASE  
4-26-16 [[53](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to June 15, 2016, at 9:00 a.m. to coincide with debtor's motion to confirm plan

**Order:** Civil minute order

### **CASE DISMISSAL**

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan and the case has been pending for approximately 8 months (the petition was filed September 23, 2015). This is unreasonable delay in a chapter 13 case absent some extraordinary or unusual circumstance or ongoing litigation, the resolution of which is a contingency of plan confirmation.

A motion to confirm a plan is pending (RS-2), however, and set for hearing on June 15, 2016, at 9:00 a.m. If this motion is denied for any reason, the court may dismiss the case.

### **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.

IT IS ORDERED that the motion is continued to June 15, 2016, at 9:00 a.m. If the debtor's motion to confirm a plan is denied, the court may grant this motion and dismiss the case.

2. [15-14121](#)-A-13 JONATHAN MEEKER  
MHM-3  
MICHAEL MEYER/MV  
DAVID JENKINS/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN

MOTION TO DISMISS CASE  
4-25-16 [[49](#)]

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

3. [12-10532](#)-A-13 ANDE DOW  
FEC-1

ORDER TO SHOW CAUSE WHY  
APPLICATION FOR PAYMENT OF  
UNCLAIMED FUNDS SHOULD NOT BE  
GRANTED  
4-8-16 [[63](#)]

FRANCISCO ALDANA/Atty. for dbt.

**No tentative ruling.**

4. [12-11732](#)-A-13 FRANK/LUZ HERNANDEZ  
MAZ-1

MOTION FOR COMPENSATION FOR  
MARK A. ZIMMERMAN, DEBTORS  
ATTORNEY(S)  
4-25-16 [[57](#)]

MARK ZIMMERMAN/Atty. for dbt.

### **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, debtors' attorney Mark A. Zimmerman has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1000 and reimbursement of expenses in the amount of \$0.00. The applicant was also paid \$2500 prior to the case filing and the additional \$1000 is to be paid through the plan. The order confirming the plan inadvertently excluded approval of attorney's fees. The total fee equals the no-look fee of \$3500 (the case was filed in 2012 before the fixed fee of LBR 2016-1 was raised to \$4000).

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 \$1000 additional compensation to be paid through the plan is reasonable, and that \$3500 compensation in the aggregate for this 2012 case is also reasonable. 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.

Mark Zimmerman'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 \$1000 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$1000, and this is in addition to the amount of \$2500 which was paid to Zimmerman prior to the filing of the case. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1000 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the 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.

5. [16-10434](#)-A-13 JOSE ANGULO  
SL-1  
JOSE ANGULO/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
4-7-16 [[27](#)]

**No tentative ruling.**

6. [15-13348](#)-A-13 CYRUSS/KRISTEN LAMARSNA  
MHM-1  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN

MOTION TO DISMISS CASE  
4-6-16 [[67](#)]

## **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

7. [16-10055](#)-A-13 MICHAEL/ROBIN BRIGGS MOTION TO CONFIRM PLAN  
SL-3 4-8-16 [[48](#)]  
MICHAEL BRIGGS/MV  
STEPHEN LABIAK/Atty. for dbt.  
RESPONSIVE PLEADING  
CASE DISMISSED

**Final Ruling**

The case dismissed, the motion is denied as moot.

8. [15-13461](#)-A-13 RAMIRO OCHOA MOTION TO DISMISS CASE  
MHM-4 4-26-16 [[132](#)]  
MICHAEL MEYER/MV  
NELLIE AGUILAR/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to June 30, 2016, at 9:00 a.m. to coincide with the hearing on debtor's motion to confirm plan

**Order:** Civil minute order

**CASE DISMISSAL**

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan and the case has been pending since 8/31/2015, which is just under 9 months. This is unreasonable delay in a chapter 13 case absent some extraordinary or unusual circumstance or ongoing litigation, the resolution of which is a contingency of plan confirmation.

A motion to confirm a plan is pending, however, and set for hearing on June 30, 2016, at 9:00 a.m. The court further granted an extension of its 75-day order for confirmation to June 30, 2016. If this motion to confirm is denied for any reason, the court will very likely dismiss the case.

**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.

IT IS ORDERED that the motion is continued to June 30, 2016, at 9:00 a.m. If the debtor's motion to confirm a plan is denied, the court may grant this motion and dismiss the case.

9. [15-12062](#)-A-13 JUAN/GINA CIENFUEGOS MOTION TO MODIFY PLAN  
PBB-2 4-13-16 [[25](#)]  
JUAN CIENFUEGOS/MV  
PETER BUNTING/Atty. for dbt.

**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.

10. [11-11567](#)-A-13 HERMAN STIDHAM MOTION TO DISMISS CASE  
MHM-4 4-4-16 [[87](#)]  
MICHAEL MEYER/MV  
JOEL WINTER/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

11. [15-11376](#)-A-13 SOFIA REYNOZO  
GEG-4  
SOFIA REYNOZO/MV  
GLEN GATES/Atty. for dbt.  
DISMISSED

MOTION TO ENFORCE SETTLEMENT  
AGREEMENT  
4-29-16 [[97](#)]

### **Tentative Ruling**

**Motion:** Enforcement Settlement

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

**Disposition:** Deny

**Order:** Civil minute order

The Chapter 13 case dismissed, the court believes it lacks jurisdiction over the settlement, which presents only "related to" jurisdiction. 28 U.S.C. 1334(b). "The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. (citations omitted). Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Pacor Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984). Unless the order dismissing the case specifically retains jurisdiction or explicitly incorporates the terms of the settlement agreement, dismissal of a Chapter 13 bankruptcy deprives the court of the authority to enforce the settlement and relegates the parties to state court remedies. *In re Valedex Fisheries Development Ass'n, Inc.*, 439 F.3d 545 (9th Cir. 2006); *In re Fietz*, 852 F.2d 455 (9th Cir. 1988); *In re Hanks*, 182 B.R. 930, 934-36 (Bankr. N.D. Ga. 1995).

12. [15-13478](#)-A-13 MICHAEL/LEEANN DAVIS  
SAH-2  
MICHAEL DAVIS/MV

OBJECTION TO CLAIM OF  
HUNTINGTON NATIONAL BANK, CLAIM  
NUMBER 1-1  
3-29-16 [[41](#)]

SUSAN HEMB/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

13. [15-13381](#)-A-13 JOSEPH DIAZ  
MHM-1  
MICHAEL MEYER/MV  
MATIN RAJABOV/Atty. for dbt.

MOTION TO DISMISS CASE  
4-25-16 [[78](#)]

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**CASE DISMISSAL**

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan and the case has been pending since 8/26/15, which is about 9 months. This is unreasonable delay in a chapter 13 case absent some extraordinary or unusual circumstance or ongoing litigation, the resolution of which is a contingency of plan confirmation.

**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.

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.

14. [15-14694](#)-A-13 DAVID PENA  
MHM-2  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE  
4-26-16 [[47](#)]

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**CASE DISMISSAL**

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan by the deadline set in the court's 75-day order for achieving confirmation. Civ. Min. Order., ECF No. 39. This is unreasonable delay by the debtor that is prejudicial to creditors.

**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.

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.