

**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:** JUNE 25, 2020

**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. [20-10100](#)-A-12     **IN RE: TRANQUILITY PISTACHIO, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY  
PETITION

1-13-2020    [[1](#)]

NOEL KNIGHT/ATTY. FOR DBT.

**No Ruling**

2. [20-10100](#)-A-12     **IN RE: TRANQUILITY PISTACHIO, LLC**  
[FRB-5](#)

MOTION TO DISMISS CASE

5-29-2020    [[204](#)]

FARM CREDIT SERVICES OF

AMERICA, PCA/MV

NOEL KNIGHT/ATTY. FOR DBT.

MICHAEL GOMEZ/ATTY. FOR MV.

STIPULATION

**Final Ruling**

The motion denied for lack of service, the matter is dropped from calendar.

3. [20-10100](#)-A-12     **IN RE: TRANQUILITY PISTACHIO, LLC**  
[NCK-3](#)

MOTION TO DISMISS CASE

5-31-2020    [[212](#)]

TRANQUILITY PISTACHIO, LLC/MV

NOEL KNIGHT/ATTY. FOR DBT.

STIPULATION

**Final Ruling**

The motion denied for lack of service, the matter is dropped from calendar.

4. [20-10301](#)-A-13     **IN RE: HELIBERTO ELIZONDO**  
[GS-3](#)

MOTION TO CONFIRM PLAN  
5-21-2020    [[62](#)]

HELIBERTO ELIZONDO/MV  
GARY SAUNDERS/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** prepared by the trustee, approved by the 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)(1), 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, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

5. [20-10301](#)-A-13     **IN RE: HELIBERTO ELIZONDO**  
[MHM-3](#)

MOTION TO DISMISS CASE  
5-18-2020    [[58](#)]

MICHAEL MEYER/MV  
GARY SAUNDERS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

Since the sole ground of the trustee's motion to dismiss is failure to confirm a Chapter 13 plan, and since the court has approved of the debtor's motion to confirm plan (Item 4), the court will drop this matter from the calendar as moot. The court will issue a civil minute order.

6. [19-10803](#)-A-13     **IN RE: CHRISTY BEELER**  
[TCS-2](#)

MOTION TO MODIFY PLAN  
5-15-2020    [[36](#)]

CHRISTY BEELER/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

7. [19-15405](#)-A-13     **IN RE: MA ERIKA FERNANDO**  
[EPE-2](#)

MOTION TO AMEND ORDER CONFIRMING PLAN  
5-12-2020    [[27](#)]

MA ERIKA FERNANDO/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Motion to Amend Order Confirming Chapter 13 Plan

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

**Disposition:** Granted

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

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)(1), 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).

"The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. Federal Rule of Civil Procedure 60(a), *incorporated by* Federal Rule of Bankruptcy 9024. "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for mistake, inadvertence, surprise, or excusable neglect." FRCP 60(b). A motion under Rule 60(b) must be made "within a reasonable time. . .and. . .no more than a year after the entry of the judgment or order or the date of the proceeding." FRCP 60(c).

The Chapter 13 plan contains an error with respect to Class 2 creditor Westamerica Bank which was due to an oversight or omission based on debtor's attorney's mistake or excusable neglect. The collateral in the plan is described as a 2011 Kia Sedona. However, per Westamerica Bank's proof of claim the vehicle is a 2012 Kia Sedona. The debtor now moves to amend the order confirming the plan

(ECF 26), Item 2 so that it reads: "Class 2 Creditor Westamerica Bank shall be paid on its collateral described as a 2012 Kia Sedona and/or pursuant to its Proof of Claim filed with this Court."

This amendment being requested 30 days after the order confirming the plan, the court does not find that this amendment poses no unreasonable delay under FRCP 60. The court will grant the debtor's motion to amend Order Confirming Chapter 13 Plan Item #2 (ECF 26).

8. [20-10206](#)-A-13     **IN RE: DIEGO/RAQUELA ROMO**  
[MHM-3](#)

MOTION TO DISMISS CASE  
5-18-2020    [[35](#)]

MICHAEL MEYER/MV  
THOMAS MOORE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

9. [20-10206](#)-A-13     **IN RE: DIEGO/RAQUELA ROMO**  
[MHM-4](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
5-21-2020    [[41](#)]

MICHAEL MEYER/MV  
THOMAS MOORE/ATTY. FOR DBT.

**Final Ruling**

**Objection:** Objection to Claim of Exemptions  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Sustained  
**Order:** Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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).

"[P]roperty passes to the estate automatically, and it is the debtor's burden to make out the claim of exemption with adequate specificity." *Payne v. Wood*, 775 F.2d 202, 206 (7th Cir. 1985). Further, [a]mbiguities in matters of claims of exemption will be construed against the debtor because "it is important that trustees

and creditors be able to determine precisely whether a listed asset is validly exempt simply by reading a debtor's schedules." *In re Mohring*, 142 B.R. 389, 395 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (internal quotation marks omitted).

California Code of Civil Procedure (C.C.P.) § 704.070(b)(2) provides, "Seventy-five percent of the paid earnings that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support." "'Paid earnings' means earning as defined by Section 706.011 that we paid to the employee during the 30-day period ending of the date of the levy." C.C.P. § 704.070(a)(2).

The debtors exempted the full value of the Checking & Savings: Wells Fargo Bank under C.C.P. § 704.070 in the amount of \$2,000.00. Schedule C, ECF 1. The debtors also exempted the full value of the Checking: US Bank under C.C.P. § 704.070 in the amount of \$1,000.00. *Id.* The debtors' Schedule C description of the assets "Checking & Savings: Wells Fargo Bank" and "Checking: US Bank" do not indicate whether the funds are paid earnings or even if the funds are earnings that were paid during the 30 days period prior to the filing of the bankruptcy petition.

The court finds that the debtors have not shown that the checking and savings accounts are fully exemptible under C.C.P. § 704.070. The court will therefore sustain the trustee's objection the debtors' claim of exemptions.

10. [18-10415](#)-A-13     **IN RE: TERRILL/SUSAN COX**  
[MHM-3](#)

MOTION TO DISMISS CASE  
5-15-2020    [[104](#)]

MICHAEL MEYER/MV

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$556.96 as of May 15, 2020. The plan payment for May 25, 2020 is \$139.24. The plan requires that this plan payment be made in addition to the above delinquency.

#### **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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

11. [20-11415](#)-A-13     **IN RE: ALBERTO GALICIA FLORES AND JOANNA CANO**  
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION  
5-21-2020    [\[18\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
SEAN FERRY/ATTY. FOR MV.

#### **Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan  
**Notice:** LBR 3015-1(c)(4); no written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

## CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

12. [20-10318](#)-A-13     **IN RE: JOSE GONZALEZ AND ITALIA DE LOZA**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
3-13-2020    [[18](#)]

MICHAEL MEYER/MV  
MARK HANNON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### Final Ruling

The trustee having withdrawn the motion to dismiss, ECF 57, the court will drop this matter from the calendar as moot.

13. [17-10427](#)-A-12     **IN RE: LUIS/ANGELA OLIVEIRA**  
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-19-2020    [[219](#)]

DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
RILEY WALTER/ATTY. FOR DBT.  
THERON COVEY/ATTY. FOR MV.

### Final Ruling

**Motion:** Stay Relief

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

**Disposition:** Granted in part; denied in part as moot

**Order:** Civil minute order

**Subject:** 20186 American Avenue, Hilmar, CA 95324

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).



#### **AS TO THE DEBTOR**

The stay of an act against the debtor continues until "the earliest of...the time the case is closed; the time the case is dismissed; or if this case is a case under. . . chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied." § 362(c)(2). The stay remains as to the debtor as long as the debtor has not been discharged and as long as the case has not been closed or dismissed.

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). "Cause" under §362(d)(1) includes a debtor's failure to make post-petition mortgage payments. *In re Ellis*, 60 B.R. 432 (9th Cir. BAP 1985).

The confirmed plan puts the debtor in Class 3.5, ECF 109, 110. The monthly mortgage payment owed creditor is \$1,558.60. Claim No. 7. The debtor has missed 37 post-petition payments totaling \$58,004.22 due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **AS TO THE ESTATE**

The motion is denied as moot. The stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate. 11 U.S.C. § 362(c)(1). Property that has been abandoned is no longer property of the estate. 11 U.S.C. § 554. Here, the subject property was abandoned. Order Granting Motion to Compel Abandonment, ECF 133. The stay against the property of the estate has been discontinued on the subject property.

As a result, the motion is moot as to the property of the estate.

#### **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.

Deutsche Bank National Trust Company's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the debtor in the property described in the motion, commonly

known as 20186 American Avenue, Hilmar, CA 95324. Relief from the automatic stay as to the interest of the trustee in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

14. [16-13634](#)-A-13     **IN RE: ANDREW ESPARZA**  
[GEG-3](#)

MOTION FOR COMPENSATION FOR GLEN E. GATES, DEBTORS  
ATTORNEY(S)  
5-21-2020    [\[80\]](#)

GLEN GATES/ATTY. FOR DBT.

#### **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, Gates Law Group, APC has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5,875.00 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.

Gates Law Group, APC'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 \$5,875.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$5,875.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5,875.00 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.

15. [20-10739](#)-A-13      **IN RE: DONNA REYNA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-5-2020    [[45](#)]

JAMES CANALEZ/ATTY. FOR DBT.

#### **Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

16. [15-11245](#)-A-13     **IN RE: WILLIAM O'BRIEN AND JILL  
ALVARADO-O'BRIEN  
[MHM-4](#)**

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
5-21-2020    [[138](#)]

MICHAEL MEYER/MV  
MARK SIEGEL/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Determination of Final Cure and Payment of Required  
Postpetition Amounts under Rule 3002.1(h)

**Notice:** LBR 9014-1(f)(1); 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). 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).

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response." Fed. R. Bankr. P. 3002.1(f). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not do so. *Id.*

Next, the holder of the claim has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to dispute (or agree) that the debtor has paid in full the amount required to cure the default on the claim or whether the debtor is otherwise current on all payments under § 1322(b)(5).

A motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement

under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h). If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bank. P. 3002.1(i).

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. It will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

17. [20-10945](#)-A-12     **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY  
PETITION  
3-12-2020    [[1](#)]

DAVID JENKINS/ATTY. FOR DBT.

**No Ruling**

18. [20-11646](#)-A-13     **IN RE: LEAH KLASCIUS**  
[ETW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY JOSEF BEGELFER  
5-14-2020    [[11](#)]

JOSEF BEGELFER/MV  
NICHOLAS WAJDA/ATTY. FOR DBT.  
EDWARD WEBER/ATTY. FOR MV.

**Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing

schedule. Absent such opposition, the court will adopt this tentative ruling.

The creditor objects to the plan, stating it is not feasible under 11 U.S.C. § 1325(a)(6), and the claim is not properly provided for in the plan. The debtor listed the claim in Class 1 for claims that mature after the plan period. The claim matures during the plan, and so should be listed in Class 2. If listed in Class 2, the debtor would have to pay \$2,100.00 a month to the Trustee and to pay the claim through the Trustee. The debtor's plan only proposes to pay \$875.00 a month to the creditor.

The court will sustain the creditor's objection.

#### **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.

Josef Begelfer's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

19. [15-10847](#)-A-13     **IN RE: RONALD/DOLORES SANDERS**  
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
5-13-2020    [\[57\]](#)

MICHAEL MEYER/MV  
SCOTT LYONS/ATTY. FOR DBT.

#### **Final Ruling**

The motion has been continued to July 16, 2020 at 9:00 a.m.

20. [19-13251](#)-A-13     **IN RE: OSCAR/MELISSA GARZA**  
[MHM-2](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1  
4-29-2020    [\[55\]](#)

MICHAEL MEYER/MV  
WILLIAM OLCOTT/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. *See Garvida*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

Furthermore, "[a] claim that is not regular on its face does not qualify as having been 'executed and filed in accordance with these rules.'" *Garvida*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

The trustee objects to Claim No. 1 on the grounds that it violates California statute-of-limitation laws. California Code of Civil Procedure (C.C.P.) §§ 312 and 337(1) bar a creditor's action to recover on a contract, obligation, or liability founded on an instrument in writing after four years. C.C.P. § 339 also bars an

action on an oral contract after two years. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) once objected to. *In re GI Indust., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

The last transaction on the account, according to Cavalry SPV I, LLC's own admission, was on January 15, 2014, which is more than four years prior to the petition date. See Claim No. 1, Statement of Account. Regardless of whether the contract is oral or in writing, an action to enforce the contract is barred under both the two-year and four-year statutes of limitations in California.

Based on the Statement of Account provided by Cavalry SPV I, LLC, Debtors have not made any payments nor had any transactions on the debt now held by Cavalry SPV I, LLC, since January 15, 2014. Thus, no transactions have been made in the four years prior to the filing of the bankruptcy petition on July 30, 2019. Consequently, the claim of Cavalry SPV I, LLC, is barred by the California statutes of limitations and must be disallowed. The creditor has not responded to the trustee's objection.

The court finds that the trustee has raised a valid legal ground for objection to Claim No. 1. The court will sustain the trustee's objection.

21. [20-10553](#)-A-13     **IN RE: PAUL MONTES**  
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
6-1-2020    [[39](#)]

U.S. BANK NATIONAL  
ASSOCIATION/MV  
PETER BUNTING/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **No Ruling**

22. [20-11453](#)-A-13     **IN RE: GLORIA ROBLES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-26-2020    [[21](#)]

BENNY BARCO/ATTY. FOR DBT.  
\$100.00 INSTALLMENT PAYMENT 6/4/20

#### **Final Ruling**

The installment having been paid, the order to show cause is discharged. The case will remain pending.



23. [20-11453](#)-A-13     **IN RE: GLORIA ROBLES**  
[EMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN  
SERVICING, LLC  
6-9-2020    [[25](#)]

LAKEVIEW LOAN SERVICING,  
LLC/MV  
BENNY BARCO/ATTY. FOR DBT.  
ERIN MCCARTNEY/ATTY. FOR MV.

**No Ruling**

24. [17-13954](#)-A-13     **IN RE: LESLIE HARRIS**  
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)  
5-22-2020    [[49](#)]

GABRIEL WADDELL/ATTY. FOR DBT.

**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, Fear Waddell, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,663.00 and reimbursement of expenses in the amount of \$88.72.

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.

Fear Waddell, P.C.'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 \$1,663.00 and reimbursement of expenses in the amount of \$88.72. The aggregate allowed amount equals \$1,751.72. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1,751.72 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.

25. [20-10856](#)-A-13     **IN RE: SHANNON HULING**  
[PBB-1](#)

MOTION TO CONFIRM PLAN  
5-18-2020    [\[18\]](#)

SHANNON HULING/MV  
PETER BUNTING/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** prepared by the trustee, approved by the 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)(1), 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, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

26. [19-12557](#)-A-12     **IN RE: FRANK/SUSAN FAGUNDES**  
[WJH-15](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES  
HELSLEY PC FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)  
5-28-2020    [[160](#)]

RILEY WALTER/ATTY. FOR DBT.

### **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 12 case, Wanger Jones has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$19,456.50 and reimbursement of expenses in the amount of \$1,613.35. 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 12 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.

Wanger Jones'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 \$19,456.50 and reimbursement of expenses in the amount of \$1,613.35. The aggregate allowed amount equals \$21,069.85. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$21,069.85 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. 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.

27. [20-10860](#)-A-13     **IN RE: ISABEL SANCHEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-19-2020    [\[28\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

### **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 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 within a reasonable time. The case has been pending for approximately 3.5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will 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. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

28. [20-10865](#)-A-13     **IN RE: ARTURO MONTEJANO MELGOZA AND LIDUVINA SEVILLA DE MONTEJANO**  
[EPE-1](#)

MOTION TO CONFIRM PLAN  
5-12-2020    [[36](#)]

ARTURO MONTEJANO MELGOZA/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.

#### **Final Ruling**

The debtors having withdrawn their motion to confirm plan, the court will drop this matter from the calendar as moot.

29. [20-10865](#)-A-13     **IN RE: ARTURO MONTEJANO MELGOZA AND LIDUVINA SEVILLA DE MONTEJANO**  
[EPE-2](#)

MOTION TO VALUE COLLATERAL OF BMO HARRIS BANK, N.A.  
5-22-2020    [\[42\]](#)

ARTURO MONTEJANO MELGOZA/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Civil minute order

The effected creditor, BMO Harris Bank, has filed notice of non-opposition, ECF 48. 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).

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2016 Cascadia Series Freightliner Tractor. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$47,500.00.

### **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 value collateral consisting of a motor vehicle 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 personal property collateral described as a 2016 Cascadia Series Freightliner Tractor has a value of \$47,500.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$47,500.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

### **DOCKET CONTROL NUMBER**

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case. Here, the debtors filed a motion to confirm plan (ECF 51) under the same docket control number as for this motion to value collateral. The court informs the debtor to follow the court's Local Rules and use different docket control numbers for each matter.

30. [20-10569](#)-A-12      **IN RE: BHAJAN SINGH AND BALVINDER KAUR**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY  
PETITION  
2-18-2020    [[1](#)]

DAVID JENKINS/ATTY. FOR DBT.

**No Ruling**



31. [20-10569](#)-A-12     **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[DRJ-1](#)

CONTINUED MOTION TO USE CASH COLLATERAL  
3-2-2020    [[24](#)]

BHAJAN SINGH/MV  
DAVID JENKINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

32. [20-10569](#)-A-12     **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[FRB-5](#)

MOTION TO CONVERT CASE FROM CHAPTER 12 TO CHAPTER 11 AND/OR  
MOTION TO DISMISS CASE  
5-29-2020    [[134](#)]

FARM CREDIT WEST, PCA/MV  
DAVID JENKINS/ATTY. FOR DBT.  
GERRICK WARRINGTON/ATTY. FOR MV.

**No Ruling**

33. [15-10573](#)-A-13     **IN RE: SUSAN LEIBOWITZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-14-2020    [[70](#)]

MICHAEL MEYER/MV  
STEPHEN LABIAK/ATTY. FOR DBT.  
WITHDRAWN

**Final Ruling**

The motion having been withdrawn, the matter is dropped as moot.

34. [19-12274](#)-A-13     **IN RE: JULIO MARTINEZ AND BLANCA CHINCHILLA**  
[TOG-1](#)

MOTION FOR JUDGMENT OR ORDER TO BE ALTERED OR AMENDED,  
AND/OR MOTION FOR NEW TRIAL, MOTION FOR AMENDMENT OR  
ADDITIONAL FINDINGS OF FACT  
4-9-2020    [[46](#)]

THOMAS GILLIS/MV  
THOMAS GILLIS/ATTY. FOR DBT.  
WITHDRAWN

#### **Final Ruling**

The motion having been withdrawn, the matter is dropped as moot.

35. [20-11375](#)-A-13     **IN RE: EDWARD MARTIN**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
5-28-2020    [[19](#)]

JOEL WINTER/ATTY. FOR DBT.

#### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition  
required

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The plan does not provide for all of the debtor's projected disposable income to be applied to unsecured creditors under the plan. 11 U.S.C. §1325(b). The debtor is over median income. Accordingly the amount to be paid to unsecured nonpriority creditors is determined by line 45 of form 122C - 2. Line 45 indicates that on a monthly basis the debtor has \$73,722.87 of funds available to pay unsecured creditors times 60. The debtor's plan provides to pay unsecured creditors zero.

The debtor has not filed all applicable tax returns required by 11 U.S.C. §1325(a)(9). The original 341 meeting of creditors held on May 12, 2020. The debtor did not provide his 2019 tax returns prior to the 341 meeting. The meeting of creditors was continued to May 26th 2020. On May 26, 2020 neither the debtor nor his counsel

appeared. The trustee's offices received no copies of the 2019 tax returns

#### **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 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

36. [20-11375](#)-A-13     **IN RE: EDWARD MARTIN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-28-2020    [\[22\]](#)

MICHAEL MEYER/MV  
JOEL WINTER/ATTY. FOR DBT.

#### **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**

Cause exists under 11 U.S.C. § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2,691.73.

Cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 2 months, yet a plan has not been

confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

The debtor has failed to provide the trustee with required tax returns for 2016-2019 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.

37. [20-10286](#)-A-13     **IN RE: DONALD/JEANNIE SA**  
[TCS-2](#)

MOTION TO CONFIRM PLAN  
4-17-2020    [[43](#)]

DONALD SA/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
DISMISSED 5/22/20

#### **Final Ruling**

The case having been dismissed, the matter is dropped as moot.

38. [20-10886](#)-A-13     **IN RE: KIRK/JAYCEE KILLIAN**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-15-2020    [[27](#)]

MICHAEL MEYER/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

The trustee having withdrawn the motion to dismiss, the court will drop this matter from the calendar as moot.

39. [20-10188](#)-A-12     **IN RE: MIKE WEBER**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY  
PETITION  
1-17-2020    [[1](#)]

DAVID JENKINS/ATTY. FOR DBT.

**Final Ruling**

This matter is continued to July 23, 2020, at 9:00 a.m.

40. [20-10188](#)-A-12     **IN RE: MIKE WEBER**  
[DRJ-4](#)

MOTION TO CONFIRM CHAPTER 12 PLAN  
5-6-2020    [[48](#)]

MIKE WEBER/MV  
DAVID JENKINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

This matter is continued to July 23, 2020, at 9:00 a.m. The motion having been fully noticed, LBR 9014-1(f)(1), and the parties having had a fully opportunity to be heard, the record is closed, and no further filings are authorized.

41. [20-10188](#)-A-12     **IN RE: MIKE WEBER**  
[DRJ-7](#)

OBJECTION TO CLAIM OF THE LEO AND EARLENE WEBER FAMILY  
TRUST, CLAIM NUMBER 7  
5-16-2020    [[66](#)]

MIKE WEBER/MV  
DAVID JENKINS/ATTY. FOR DBT.

#### **Final Ruling**

This matter is continued to July 23, 2020, at 9:00 a.m. Opposition by the creditor is due July 9, 2020; reply by the debtor may be filed July 16, 2020.

42. [20-10189](#)-A-13     **IN RE: JOSHUA CRABLE**  
[MHM-3](#)

MOTION TO DISMISS CASE  
5-18-2020    [[31](#)]

MICHAEL MEYER/MV  
THOMAS MOORE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **No Ruling**

43. [20-10189](#)-A-13     **IN RE: JOSHUA CRABLE**  
[MHM-4](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
5-21-2020    [[35](#)]

MICHAEL MEYER/MV  
THOMAS MOORE/ATTY. FOR DBT.  
WITHDRAWN

#### **Final Ruling**

The objection having been withdrawn, the matter is dropped as moot.

44. [18-12195](#)-A-13     **IN RE: JAY/BRENDA SINGLETON**  
[PLG-5](#)

MOTION TO MODIFY PLAN  
5-13-2020    [\[99\]](#)

JAY SINGLETON/MV  
STEVEN ALPERT/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 the 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.

45. [19-12697](#)-A-13     **IN RE: CHRISTOPHER/HEATHER KENT**  
[DRJ-2](#)

CONTINUE MOTION TO MODIFY PLAN  
3-20-2020    [\[32\]](#)

CHRISTOPHER KENT/MV  
DAVID JENKINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** prepared by the trustee, approved by the debtor's counsel

The trustee has withdrawn his opposition to this motion to confirm plan. ECF 44. No other opposition 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, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

46. [20-10188](#)-A-12     **IN RE: MIKE WEBER**

OBJECTION TO CONFIRMATION OF PLAN BY LEO AND EARLENE WEBER  
FAMILY TRUST, MOTION TO ENFORCE JUDGE RIMEL'S ORDER  
6-11-2020    [\[79\]](#)

LEO AND EARLENE WEBER FAMILY  
TRUST/MV  
DAVID JENKINS/ATTY. FOR DBT.  
THOMAS CAMPAGNE/ATTY. FOR MV.

### **Final Ruling**

This matter is continued to July 23, 2020, at 9:00 a.m. Opposition by the debtor is due July 9, 2020; reply by the creditor may be filed July 16, 2020.



47. [19-10803](#)-A-13    **IN RE: CHRISTY BEELER**  
[MHM-1](#)

NOTICE OF STATUS CONFERENCE RE: NOTICE OF MORTGAGE PAYMENT  
CHANGE  
6-17-2020    [[53](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

**No Ruling**