

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: THURSDAY

DATE: JULY 19, 2018

CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [15-10004](#)-A-13 **IN RE: LARRY VALENCIA**
[ASW-1](#)

MOTION TO APPROVE LOAN MODIFICATION
3-2-2018 [[96](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
TIMOTHY SPRINGER
CAREN CASTLE/ATTY. FOR MV.

Final Ruling

Motion: Approval of Mortgage Loan Modification

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).

LOAN MODIFICATION

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests stay relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." See 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 326(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(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 court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. 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 authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

2. [18-12104](#)-A-13 **IN RE: DIANNA CONDELL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-29-2018 [[16](#)]

MARK ZIMMERMAN

Final Ruling

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

3. [18-10405](#)-A-13 **IN RE: MARIA GUARDADO**
[TOG-2](#)

MOTION TO CONFIRM PLAN
5-25-2018 [[38](#)]

MARIA GUARDADO/MV
THOMAS GILLIS

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 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 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, and the court will approve confirmation of the plan.

4. [13-16207](#)-A-13 **IN RE: MICHAEL/NOREEN THACKREY**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
6-11-2018 [[91](#)]

PETER FEAR

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 \$2,291.00 and reimbursement of expenses in the amount of \$203.57. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

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 \$2,291.00 and reimbursement of expenses in the amount of \$203.57. The aggregate allowed amount equals \$2,494.57. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2,494.57 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

5. [18-12208](#)-A-13 **IN RE: LYDIA MARTINEZ**
[TPH-1](#)

MOTION TO AVOID LIEN OF 800-802 FERN STREET, LLC
6-27-2018 [\[14\]](#)

LYDIA MARTINEZ/MV
THOMAS HOGAN

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$316,608.56

All Other Liens: \$176,958.00

Exemption: \$175,000.00

Value of Property: \$295,000.00

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 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The respondent's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

6. [18-11812](#)-A-13 **IN RE: HEATHER SILVEIRA**
[MHM-2](#)

MOTION TO DISMISS CASE
6-13-2018 [[21](#)]

MICHAEL MEYER/MV
STEPHEN LABIAK
RESPONSIVE PLEADING

No Ruling

7. [16-12713](#)-A-13 **IN RE: JASON ATHERTON AND GENZZIA**
DOVIGI-ATHERTON
[TCS-5](#)

MOTION TO MODIFY PLAN
6-12-2018 [[72](#)]

JASON ATHERTON/MV
TIMOTHY SPRINGER

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 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 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, and the court will approve confirmation of the plan.

8. [16-14020](#)-A-13 **IN RE: KURT/SABRINA PRINDIVILLE**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-6-2018 [\[58\]](#)

SANTANDER CONSUMER USA INC./MV
JERRY LOWE
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Fiat 500

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).

STAY RELIEF

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). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

Here, the lease has expired and the debtor has surrendered the vehicle. The court finds this to be cause.

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.

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.

Santander Consumer USA, Inc.'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. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2015 Fiat 500, as to all parties in interest. 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.

9. [18-11523](#)-A-13 **IN RE: MANUEL/CAROLE CAMILO**
[MHM-2](#)

MOTION TO DISMISS CASE
6-5-2018 [[25](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
DISMISSED

Final Ruling

The case dismissed, the matter is denied as moot.

10. [16-11025](#)-A-13 **IN RE: TIM/CHERIE WILKINS**
[JLP-3](#)

MOTION FOR APPROVAL OF FIRST LEASE ASSIGNMENT AND THIRD
AMENDMENT TO LEASE
6-26-2018 [[234](#)]

DONAHUE SCHRIBER REALTY GROUP,
LP/MV
PETER FEAR
JENNIFER PRUSKI/ATTY. FOR MV.

No Ruling

11. [18-11926](#)-A-13 **IN RE: STEVEN/TELVA RAMIREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
6-14-2018 [[30](#)]

MICHAEL MEYER/MV
SCOTT LYONS
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [18-12226](#)-A-13 **IN RE: MARIA DE MORENO**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL
6-8-2018 [[9](#)]

MARIA DE MORENO/MV
THOMAS GILLIS

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]
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 respondent 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).

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 2015 Chrysler 200. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$10,843.

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 2015 Chrysler 200 has a value of \$10,843. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$10,843 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.

13. [13-12932](#)-A-13 **IN RE: THONG NGUYEN**
[DAT-6](#)

MOTION TO AVOID LIEN OF DCFS USA, LLC
6-3-2018 [[83](#)]

THONG NGUYEN/MV
ANH TRINH

No Ruling

14. [13-12932](#)-A-13 **IN RE: THONG NGUYEN**
[DAT-7](#)

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY, LLC
6-4-2018 [[85](#)]

THONG NGUYEN/MV
ANH TRINH

No Ruling

15. [18-11832](#)-A-13 **IN RE: MANUEL/ALICE FLORES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
6-14-2018 [[13](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

No Ruling

16. [18-11832](#)-A-13 **IN RE: MANUEL/ALICE FLORES**
[MHM-2](#)

MOTION TO DISMISS CASE
6-14-2018 [[18](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [18-10435](#)-A-13 **IN RE: SERENA VALDEZ**
[MHM-4](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-19-2018 [\[61\]](#)

MICHAEL MEYER/MV
HAROUT BOULDOUKIAN

Final Ruling

Objection: Claim of Exemptions

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

Disposition: Sustained

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).

DISCUSSION

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof. Further, the preponderance-of-the-evidence standard applies. *See In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

California Code of Civil Procedure § 704.060 allows an exemption for tools of the trade reasonably necessary to and actually used" by the debtor and/or spouse. Here, the debtor claims a tools of the trade exemption for Western Sky Water, LLC, which has been inactive since 2015. The objection will be sustained.

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.

Michael H. Meyer's objection 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 objection,

IT IS ORDERED that the objection is sustained.

18. [18-10339](#)-A-13 **IN RE: KENNETH BLOWERS AND KIMBERLY
BOLTON-BLOWERS
[KMM-1](#)**

MOTION TO CONFIRM PLAN
6-14-2018 [\[44\]](#)

KENNETH BLOWERS/MV
KARNEY MEKHITARIAN
RESPONSIVE PLEADING

No Ruling

19. [18-12140](#)-A-13 **IN RE: JULIA CORONA
[EGS-1](#)**

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-22-2018 [\[16\]](#)

BAYVIEW LOAN SERVICING, LLC/MV
EDWARD SCHLOSS/ATTY. FOR MV.
DISMISSED

Final Ruling

Motion: Stay Relief
Disposition: Denied as moot
Order: Civil minute order

MOOTNESS STANDARDS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Envtl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

RELIEF UNDER SECTION 362(d)(1) AND (2)

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii)

closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because the case has been dismissed, the automatic stay no longer exists. The court is unable to grant effective relief.

RELIEF UNDER SECTION 362(d)(4)

The movant requests relief from the automatic stay under § 362(d)(4). Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4). An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." *Id.*

However, similar to paragraphs (1)-(3) of § 362(d), paragraph (4) provides a basis for relief from the automatic stay. Subsection (d)(4) begins with following language: "On request of a party in interest . . . , the court shall grant relief *from the stay provided under subsection (a)* of this section, such as by terminating, annulling, modifying, or conditioning such stay-(4) with respect to a *stay of an act against real property under subsection (a)* . . . , if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" *Id.* § 362(d)(4) (emphases added).

Based on its plain language, paragraph (4) of § 362(d) is one of several disjunctive grounds for relief *from the automatic stay* under § 362(a). It cannot be the basis for relief in a vacuum when no stay exists. Although relief under § 362(d)(4) may be binding in a subsequent bankruptcy case, a prerequisite to such relief is an extant automatic stay under § 362(a).

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because this case has been dismissed, the automatic stay no longer exists. The court cannot grant relief from a non-existent stay under § 362(d)(4). The motion will be denied as moot.

CIVIL MINUTE ORDER

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

The present motion for relief from the stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot.

20. [18-11843](#)-A-13 **IN RE: JOHN DELGADO**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-1-2018 [[21](#)]

U.S. BANK TRUST, N.A./MV
NANCY LEE/ATTY. FOR MV.
DISMISSED

Final Ruling

Motion: Stay Relief

Disposition: Denied as moot

Order: Civil minute order

MOOTNESS STANDARDS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

RELIEF UNDER SECTION 362(d)(1) AND (2)

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because the case has been dismissed, the automatic stay no longer exists. The court is unable to grant effective relief.

RELIEF UNDER SECTION 362(d)(4)

The movant requests relief from the automatic stay under § 362(d)(4). Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4). An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." *Id.*

However, similar to paragraphs (1)–(3) of § 362(d), paragraph (4) provides a basis for relief from the automatic stay. Subsection (d)(4) begins with following language: "On request of a party in interest . . . , the court shall grant relief *from the stay provided under subsection (a)* of this section, such as by terminating, annulling, modifying, or conditioning such stay—(4) with respect to a *stay of an act against real property under subsection (a)* . . . , if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" *Id.* § 362(d)(4) (emphases added).

Based on its plain language, paragraph (4) of § 362(d) is one of several disjunctive grounds for relief *from the automatic stay* under § 362(a). It cannot be the basis for relief in a vacuum when no stay exists. Although relief under § 362(d)(4) may be binding in a subsequent bankruptcy case, a prerequisite to such relief is an extant automatic stay under § 362(a).

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)–(C).

Because this case has been dismissed, the automatic stay no longer exists. The court cannot grant relief from a non-existent stay under § 362(d)(4). The motion will be denied as moot.

CIVIL MINUTE ORDER

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

The present motion for relief from the stay has been presented to the court. Having considered the motion together with papers filed

in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot.

21. [18-11844](#)-A-13 **IN RE: NOEL MUNERLYN AND ROBYN**
HASKINS-MUNERLYN
[MHM-2](#)

MOTION TO DISMISS CASE
6-14-2018 [\[15\]](#)

MICHAEL MEYER/MV
PETER BUNTING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

22. [17-13446](#)-A-13 **IN RE: LEONEL TERA**
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, DEBTORS ATTORNEY(S)
6-18-2018 [\[61\]](#)

PETER FEAR

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the

amount of \$11,521.00 and reimbursement of expenses in the amount of \$536.82.

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 an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Fear Waddell, P.C.'s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$11,521.00 and reimbursement of expenses in the amount of \$536.82. The aggregate allowed amount equals \$12,057.82. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$12,057.82 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 fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

23. [18-11047](#)-A-13 **IN RE: LEOVIGILDO CHAVEZ AND GUDELIA**
HERNANDEZ
[TOG-2](#)

MOTION TO CONFIRM PLAN
6-14-2018 [[28](#)]

LEOVIGILDO CHAVEZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

With the acquiescence of the moving party, the motion is denied.

24. [18-11467](#)-A-13 **IN RE: FRANKLIN BAER**
[KSB-1](#)

MOTION TO CONFIRM PLAN
6-19-2018 [[31](#)]

FRANKLIN BAER/MV
KELLY BRESSO

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

The moving party did not provide a sufficient period of notice of the hearing on the motion or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 2002(b) requires not less than 28 days' notice of the time fixed for filing objections and the hearing to consider confirmation of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 42 days' notice of the motion. LBR 3015-1(d). Creditors and parties in interest received less than 21 days' notice of the time fixed for filing objections, and the motion and notice of hearing were filed and served less than 35 days before the hearing. Here, only 30 days notice was given.

25. [18-11467](#)-A-13 **IN RE: FRANKLIN BAER**
[MHM-2](#)

MOTION TO DISMISS CASE
6-1-2018 [[17](#)]

MICHAEL MEYER/MV
KELLY BRESSO
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [18-11473](#)-A-13 **IN RE: SUKHPAL SINGH AND RANI CHAUHAN**
[MHM-2](#)

MOTION TO DISMISS CASE
6-1-2018 [[21](#)]

MICHAEL MEYER/MV
DAVID JENKINS

No Ruling

27. [14-15882](#)-A-13 **IN RE: DELIA GALLARDO**
[JDR-7](#)

MOTION TO MODIFY PLAN
5-25-2018 [[134](#)]

DELIA GALLARDO/MV
JEFFREY ROWE
RESPONSIVE PLEADING
CASE DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

28. [13-16683](#)-A-13 **IN RE: SENG SAEPHAN AND INKHAM SAYAVONG**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
6-8-2018 [\[57\]](#)

PETER FEAR

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 \$2,771.50 and reimbursement of expenses in the amount of \$134.31. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

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 \$2,771.50 and reimbursement of expenses in the amount of \$134.31. The aggregate allowed amount equals \$2,905.81. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2,905.81 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

29. [18-10984](#)-A-13 **IN RE: ANTONIO MARTINEZ AND PATRICIA FELIX**
[MHM-1](#)

MOTION TO DISMISS CASE
6-5-2018 [[17](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

No Ruling

30. [18-11488](#)-A-13 **IN RE: ARMANDO/ROSA DIAZ**
[TOG-1](#)

MOTION TO CONFIRM PLAN
6-11-2018 [[17](#)]

ARMANDO DIAZ/MV
THOMAS GILLIS

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 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 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, and the court will approve confirmation of the plan.

31. [18-11896](#)-A-13 **IN RE: NOEMY SANCHEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
6-15-2018 [[17](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

32. [18-11896](#)-A-13 **IN RE: NOEMY SANCHEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
6-15-2018 [[20](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

33. [18-12350](#)-A-13 **IN RE: JUAN REYES**
[YG-2](#)

MOTION TO RECONSIDER
7-5-2018 [[24](#)]

JUAN REYES/MV
YELENA GUREVICH

No Ruling