

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

2500 Tulare Street, Fifth Floor  
Department A, Courtroom 11  
Fresno, California

**Thursday**

**August 7, 2014**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

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

**MATTERS RESOLVED BEFORE HEARING**

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

**ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [13-14006](#)-A-13 DENNIS NAJARIAN MOTION TO MODIFY PLAN  
THA-2 6-27-14 [[34](#)]  
DENNIS NAJARIAN/MV  
THOMAS ARMSTRONG/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

2. [13-17007](#)-A-13 DANNY/LORI CARRELL MOTION TO MODIFY PLAN  
GMA-3 7-1-14 [[62](#)]  
DANNY CARRELL/MV  
GEOFFREY ADALIAN/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

3. [10-16749](#)-A-13 DELANO/ELIZABETH THORPE MOTION TO MODIFY PLAN  
PLF-5 6-20-14 [[71](#)]  
DELANO THORPE/MV  
PETER FEAR/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

4. [14-12749](#)-A-13 TERESITA DUROY-UMALI MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS ,  
MOTION TO DISMISS CASE  
7-11-14 [[24](#)]  
JOSEPH ARNOLD/Atty. for dbt.

**No tentative ruling.**

5. [14-11950](#)-A-13 DARLA RAMBONGA MOTION TO DISMISS CASE FOR  
MHM-1 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 7-22-14 [[37](#)]  
SCOTT LYONS/Atty. for dbt.

**No tentative ruling.**

6. [14-11851](#)-A-13 MARK DAFFERN MOTION TO CONFIRM PLAN

MARK ZIMMERMAN/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Confirmation of a Chapter 13 Plan

**Disposition:** Continued to September 25, 2014, at 9:00 a.m.

**Order:** Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

The following creditors have filed proofs of claim and were not properly served: Citibank, N.A., TD Retail Card Services, FIA Card Services, N.A., Altair OH XIII, LLC, and Bank of America, N.A. The court notes that TD RCS Fred Meyers may be the same entity to TD Retail Card Services but is unsure whether this is the case.

These creditors filed proofs of claim after the date of service of the notice of hearing on confirmation, motion to confirm, and the plan. If these creditors had appeared on the proof of service, the court would not have required that service be made on the last-filed addresses under Rule 2002(g) because the filing of the proofs of claim post-dated the service of the motion.

However, the court requires notice on all creditors and parties in interest. Because the proof of service does not show that some of these creditors received notice at any address, the court will continue the motion to allow proper notice on them.

The court also notes that Bank of America did receive notice at the special notice address given. But Bank of America has also filed a proof of claim, which may represent a different claim than the claim represented by the special notice request that was filed. In any event, notice must also be given to the proof of claim address. See Fed. R. Bank. P. 2002(g).

Because the supplemental notice required by the court will now post-date the proofs of claim, the court will require that the correct addresses be used. Further, the court will require notice on all other creditors and parties in interest of the continued hearing date. A notice of continued hearing under LBR 3015-1(d)(1) and 9014-1(f)(1) shall be filed no later than August 14, 2014, along with a supplemental proof of service showing service of the motion, notice of hearing, and plan. The continued hearing date will be September 25, 2014, at 9:00 a.m.

If all creditors on a current copy of the court's master mailing list receive notice at the address shown on such list, the court will likely find notice to be proper. For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors

must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

7. [14-12651](#)-A-13 BRENT EICHELBERGER  
MHM-1  
MICHAEL MEYER/MV  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS ,  
MOTION TO DISMISS CASE  
7-11-14 [[18](#)]

SCOTT LYONS/Atty. for dbt.

**No tentative ruling.**

8. [14-11553](#)-A-13 MATTHEW/ANGELA KNOTT  
JDM-1  
MATTHEW KNOTT/MV  
JAMES MILLER/Atty. for dbt.  
MOTION TO INCUR DEBT  
7-3-14 [[28](#)]

**Tentative Ruling**

**Motion:** Approve Debtor's Incurring New Debt [Vehicle Loan]

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

**Disposition:** Denied

**Order:** Prepared by moving party

The debtor seeks to incur new debt to finance the purchase of a vehicle. The court will deny the motion. The proposed interest rate of 19.45% is problematic. Further, the proposed price appears inflated, so without some evidence showing that the proposed price is consistent with the actual value of the used vehicle debtors want to purchase, the court cannot approve the purchase.

9. [14-10854](#)-A-13 TIMOTHY/MIJHA LEASURE  
MAZ-2  
TIMOTHY LEASURE/MV  
MARK ZIMMERMAN/Atty. for dbt.  
MOTION TO CONFIRM PLAN  
6-18-14 [[53](#)]

**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 Chapter 13 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.

10. [14-13562](#)-A-13 JAMES/MARGARET CHARLES MOTION TO EXTEND AUTOMATIC STAY  
TCS-1 7-26-14 [[13](#)]  
JAMES CHARLES/MV  
TIMOTHY SPRINGER/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted except as to any creditor without proper notice of this motion

**Order:** Prepared by moving party pursuant to the instructions below

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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

If this case was filed under Chapter 13 of title 11, the court will extend the automatic stay subject to the condition that all plan payments are timely made to the Chapter 13 trustee for the next six months, and the order shall provide that (i) the debtor shall make such timely payments for the next six months to the Chapter 13 trustee, (ii) if the debtor fails to make any such monthly payment, the Chapter 13 trustee may file a certification of noncompliance with the order on this motion along with a proposed order, and (iii) upon the filing of such certification, the court may then dismiss the case

without further notice or a hearing.

11. [14-12777](#)-A-13 RAY/SANDY TOLLISON  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
7-11-14 [[29](#)]

URSULA BARRIOS/Atty. for dbt.

**No tentative ruling.**

12. [13-15979](#)-A-13 JAIME HERNANDEZ  
MHM-3  
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS  
CASE FOR UNREASONABLE DELAY  
THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE , MOTION FOR BAR  
DATE  
6-20-14 [[86](#)]

WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

13. [14-12086](#)-A-13 LEON COLE  
MHM-1  
MICHAEL MEYER/MV  
MICHAEL ARNOLD/Atty. for dbt.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-22-14 [[36](#)]

**No tentative ruling.**

14. [12-11895](#)-A-13 BRENDA MOTTA  
PLF-2  
BRENDA MOTTA/MV  
PETER FEAR/Atty. for dbt.

MOTION TO INCUR DEBT  
7-17-14 [[33](#)]

**Tentative Ruling**

**Motion:** Approve Debtor's Incurring New Debt [Vehicle Loan]

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

**Disposition:** Denied

**Order:** Prepared by moving party

The debtor seeks to incur new debt to finance the purchase of a vehicle. The court will deny the motion. Schedules I and J filed in support of the motion show a budgeted amount of \$100 per month for transportation. But the motion states that the debtor's job requires the debtor to drive every day to three or four different cities across a seven-county area. The court does not find this budgeted amount

credible given the debtor's extensive driving. Accordingly, Schedules I and J do not show that the debtor has the ability to pay all future plan payments, projected living and business expenses, and the new debt.

15. [09-17196](#)-A-13 RONALD/LYNETTE BINGHAM  
PLF-6  
LYNETTE BINGHAM/MV  
MOTION FOR WAIVING REQUIREMENT  
THAT DEBTOR RONALD G. BINGHAM  
FILE DEBTOR'S SECTION 11 U.S.C.  
1328 CERTIFICATE  
7-3-14 [[77](#)]  
PETER FEAR/Atty. for dbt.

### **Final Ruling**

**Motion:** Waiver of Requirement to File § 1328 Certifications

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

**Disposition:** Continued to August 28, 2014, at 9:00 a.m. with a supplemental declaration filed no later than August 21, 2014

**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).

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c).

The debtor named in the motion has died. The court will continue the motion to allow the debtor to file a supplemental declaration with a copy of the death certificate.

*At the continued hearing, if a death certificate has been properly filed, the court may adopt the following as the ruling:*

Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

The court finds that further administration is possible and in the best interests of the debtor and creditors in this case as no creditor or party in interest has presented grounds for dismissing the case or denying the waiver requested. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1001-1(f), the court will grant the motion in part and waive the requirement that the deceased debtor file certifications



concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

The motion is denied in part to the extent it requests entry of discharge pursuant to § 1328(h) and to the extent it requests an order directing the case manager to enter discharge after the trustee certifies that the case has been fully administered and is ready for closure. Discharge will be entered in this case only according to the procedures described in LBR 5009-1, and the order on this motion will not affect those procedures other than waiving certain certification requirements applicable to the deceased debtor.

The order shall state only the following: "The motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328."