

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

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: SEPTEMBER 2, 2015
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [13-10601](#)-A-13 REGINA MAYFIELD
MHM-2
MICHAEL MEYER/MV
SUSAN SALEHI/Atty. for dbt.

MOTION TO DISMISS CASE
7-15-15 [[42](#)]

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 \$330.

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. Payments are delinquent in the amount of \$330. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

2. [14-15902](#)-A-13 BUFORD LAND
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

AMENDED MOTION TO DISMISS CASE
.
7-28-15 [[97](#)]

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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The trustee made demand at the business exam, held June 4, 2015, for proof of spousal support payments payable postpetition given a creditor's raising of this issue. At the fifth meeting of creditors on July 8, 2015, such proof had not been provided. (This delay alone—the failure to provide support proof over a passage of time during which 5 meetings of creditors took place—was unreasonable as the issue appears to have been raised by the trustee at the first meeting of creditors or earlier.)

On July 9, 2015, the trustee received handwritten notes from debtor's counsel purporting to be proof of spousal support payments. These documents are attached as Exhibit B to the motion. A number of the copies of money orders are not comprehensible as to amount or the date. A number are not comprehensible as to the date and the amounts on a number of them are barely legible. And some do show amounts and dates legibly. But the debtor has failed to create a meaningful document that clearly conveys the amount owed, the date such amount was owed, and the corresponding legible proof for such date. The court will not construct such a document from the exhibit pages filed. Even if the court were to attempt such construction, the effort would fail as a number of the copies purporting to be proof are illegible. Thus, the debtor has not provided to the trustee *comprehensible* proof of the spousal support payments due postpetition. This failure to cooperate with the trustee constitutes cause under § 1307(c)(1).

Alternatively, the debtor has also failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343. The debtor did not appear at the second meeting of creditors held March 4, 2015.

Lastly, as the undisputed factual assertion in paragraph 1 of the motion indicates, the debtor has failed to pay a domestic support obligation that became payable after the date of the filing of the petition. This is an independent ground for dismissal. *Id.* § 1307(c)(11).

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 court hereby dismisses this case.

3. [13-11803](#)-A-13 JERZY BARANOWSKI MOTION TO DISMISS CASE
MHM-1 7-15-15 [[153](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [15-12403](#)-A-13 RIGOBERTO RAMIREZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-22-15 [[24](#)]

Tentative Ruling

If the past due filing fee installments in the amount of \$156 have not been paid in full by the time of the hearing, the case will be dismissed.

5. [15-12403](#)-A-13 RIGOBERTO RAMIREZ MOTION TO DISMISS CASE
MHM-1 8-11-15 [[29](#)]
MICHAEL MEYER/MV

Tentative 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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). These documents include proof of all income. The debtor's Schedule I, of which the court takes judicial notice as to its contents and existence on the debtor's case docket, indicates that the debtor has \$3500 gross wages every month. In addition the debtor has not provided tax returns to the trustee for 2014.

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.

6. [15-12703](#)-A-13 ALICE WILLIAMS
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
8-11-15 [[17](#)]

WILLIAM EDWARDS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the objection is overruled as moot.

7. [15-12703](#)-A-13 ALICE WILLIAMS
MHM-2
MICHAEL MEYER/MV
WILLIAM EDWARDS/Atty. for dbt.
DISMISSED

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
8-11-15 [[21](#)]

Final Ruling

The case dismissed, the matter is denied as moot.

8. [15-12703](#)-A-13 ALICE WILLIAMS
MHM-3
MICHAEL MEYER/MV
WILLIAM EDWARDS/Atty. for dbt.
DISMISSED

CHAPTER 13 TRUSTEE'S OBJECTION
TO THE NO-LOOK FEE
8-11-15 [[25](#)]

No tentative ruling.

9. [10-63707](#)-A-13 JOSE/MARGARITA GAYTAN
PWG-3
JOSE GAYTAN/MV

MOTION FOR EXEMPTION FROM
FINANCIAL MGMT COURSE , EXCUSE
DEBTOR AND JOINT DEBTOR FROM
THE REQUIREMENT 1328
CERTIFICATE AND CERTIFICATE OF
CHAPTER 13 REGARDING 11 USC
SECTION 522 (Q) DUE TO THE
DEATH OF ONE AND THE INCAPACITY
OF THE OTHER
8-7-15 [[44](#)]

PHILLIP GILLET/Atty. for dbt.

Final Ruling

Matter: Motion for Exemption from Financial Management Course and
Waiver of § 1328 Certificate Requirements

Disposition: Denied without prejudice

Order: Civil minute order

This pre-hearing disposition addresses the practice in this district of cobbling together multiple proofs of service, one executed by a person in the attorney's office and one executed by a third-party notice provider, as a way of proving that documents were transmitted for notice purposes. This practice has been followed in this case.

Although the proof of service for this matter (ECF No. 49) contains a statement that the documents listed in the proof were mailed by first class U.S. mail to designated parties, the proof reveals that the person executing the proof was not the server and did not personally mail these documents. The proof further explains that a third party, BAE Systems (The Noticing Center), was the party effectuating the mailing. The proof then attaches a copy of an additional proof of service. This document is entitled "Certificate of Service" and shows that notice by first class mail or electronic transmission was sent to the enumerated persons or entities. But this document does not describe the documents or action for which notice was given.

FIRST PROOF OF SERVICE

For matters requiring notice to persons or entities, the local rules require that a proof of service be filed showing that such notice was served. LBR 9014-1(e)(2). (The term service in this context means transmission of documents in the manner required for notices by the Rules and not formal service as required under Rule 7004.) The proof is an affidavit. See Fed. R. Civ. P. 4(1)(1); James M. Wagstaffe, William W. Schwarzer & Hon. A. Wallace Tashima, *Federal Civil Procedure Before Trial* ¶ 5:314, at 5-78 (rev. 2015). As an affidavit, the proof must be executed by a person who satisfies the personal knowledge requirement of Federal Rule of Evidence 602. See *id.*; see

also *Thomas v. Deutsche Bank Nat. Trust*, No. C 12-00472 CRB, 2012 WL 821973, at *1 n.2 (N.D. Cal. Mar. 9, 2012).

Thus, the person signing a proof cannot state that the person caused service (or transmission of notice) by a third party who performed the service. See *Ning Ye v. Holder*, 644 F. Supp. 2d 112, 120-21 (D.D.C. 2009). "This is not competent proof of service because such proof must be made by affidavit of the server." *Id.* at 121 (citing Fed. R. Civ. P. 4(1)(1)). Indeed, by analogy, Federal Rule of Civil Procedure 4(1) applicable in adversary proceedings requires the proof to be by the server's affidavit. In the notice context, this means that the proof showing transmission of the notice must be made by the person actually effectuating the transmission of the documents into the U.S. mail.

Here, the first proof of service for notice of this matter, executed by an employee of the movant's counsel, is invalid. The person executing the proof lacks the requisite personal knowledge of the attested facts because that person is not the "server," i.e., the person actually effectuating the notice by placing the documents in the U.S. mail. The person essentially has stated that someone else transmitted the documents—BAE Systems's agent.

SECOND PROOF OF SERVICE

The second proof of service for notice of this matter, executed presumably by an agent of BAE Systems, Joseph Speetjens, is also invalid. The court's Local Rules mandate that the documents served be identified by title in the proof. LBR 9014-1(e)(3). This second proof does not indicate what documents were served by title. Instead, it states that the "document specified in the Form ID field" of the proof was served. The Form ID field fails to identify documents by title. Thus, the proof is invalid.

Because the proof is invalid, the court cannot presume that notice was given to the U.S. Trustee, the case trustee, and all other parties in interest as required by Local Rule 1016-1. (The court notes that the third proof of service filed at ECF No. 48 violates the court's "Revised Guidelines for the Preparation of Documents" and will not be accepted.)

COMPLIANCE WITH RULE 9037

The attorney filing the papers for this matter has not complied with Rule 9037. In particular, ECF Nos. 47 and 48 both contain problematic information. The attorney shall file an ex parte application to seal and restrict public access to the pertinent filed documents under § 107(c)(1) and Rule 9037(c) or (d) no later than September 10, 2015. A redacted copy of any restricted, sealed documents will be filed to replace the documents restricted and sealed.

CIVIL MINUTE ORDER

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

The debtors' motion for exemption from the personal financial management course and for waiver of the § 1328 certification requirements has been presented to the court. The court having determined that the proofs of service for the notice of this matter

are invalid, and given the insufficiency of notice of this matter to the respondents,

IT IS ORDERED that the motion is denied without prejudice.

IT IS FURTHER ORDERED that, no later than September 10, 2015, the attorney for the debtors shall file ex parte applications to seal and restrict public access to documents containing information protected by Rule 9037.

10. [15-10007](#)-A-13 GEORGE/SILVIA MARTINEZ MOTION TO DISMISS CASE
MHM-1 7-14-15 [[28](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [15-10007](#)-A-13 GEORGE/SILVIA MARTINEZ MOTION TO DISMISS CASE
MHM-3 8-3-15 [[39](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

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 chapter 13 trustee moves to dismiss this case on grounds that no plan has been confirmed even though the case has been pending since January 3, 2015. This case has been pending nearly 8 months since the case was filed. This constitutes unreasonable delay by the debtors that is prejudicial to creditors. 11 U.S.C. § 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 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 given the debtor's failure to confirm a chapter 13 plan since this case was filed January 3, 2015. The court hereby dismisses this case.

12. [15-10007](#)-A-13 GEORGE/SILVIA MARTINEZ MOTION TO DISMISS CASE
MHM-4 8-19-15 [[50](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

13. [15-12408](#)-A-13 MONIQUE BOOKOUT MOTION TO VALUE COLLATERAL OF
RSW-1 SANTANDER CONSUMER USA, INC.
MONIQUE BOOKOUT/MV 7-30-15 [[14](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: LBR 9014-1(f)(2); no 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). 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 2012 Mitsubishi Lancer. 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 \$7700.

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 2012 Mitsubishi Lancer has a value of \$7700. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7700 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.

14. [15-12408](#)-A-13 MONIQUE BOOKOUT
RSW-2
MONIQUE BOOKOUT/MV

MOTION TO VALUE COLLATERAL OF
FIRST FRANKLIN FINANCIAL
CORPORATION
7-30-15 [[18](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Disposition: Denied without prejudice

Order: Civil minute order

The debtor filed a request for continuance at docket no. 24. The request indicates that the wrong corporation has been served. On the proof of service for the continuance request, it appears that the term "wrong corporation" means the respondent is the wrong respondent. The debtor does not mean that a corporate agent of service was the wrong one served. Because the respondent named in the motion is not the proper party, the court must deny the motion. Serving the present motion on a different respondent does not resolve the motion's failure to name the proper party.

15. [12-15109](#)-A-13 EDUARDO/GLENDA VALLADARES MOTION TO DISMISS CASE
MHM-3 7-15-15 [[77](#)]
MICHAEL MEYER/MV
FRANK RUGGIER/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [15-10409](#)-A-13 GABRIEL DIAZ MOTION TO DISMISS CASE
MHM-1 7-27-15 [[49](#)]
MICHAEL MEYER/MV
RABIN POURNAZARIAN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

17. [15-10409](#)-A-13 GABRIEL DIAZ MOTION TO CONFIRM PLAN
PLG-1 7-15-15 [[42](#)]
GABRIEL DIAZ/MV
RABIN POURNAZARIAN/Atty. for dbt.

No tentative ruling.

18. [15-10914](#)-A-13 RICHARD/SUSAN BILL CONTINUED MOTION TO CONFIRM
RSW-2 PLAN
RICHARD BILL/MV 6-2-15 [[32](#)]
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [11-16822](#)-A-13 RUBY TOMAS MOTION TO MODIFY PLAN
RSW-2 7-22-15 [[60](#)]
RUBY TOMAS/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

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 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).

NOTICE PROCEDURES

Background

This court does not accept the practice in this district of cobbling together multiple proofs of service, one executed by a person in the attorney's office and one executed by a third-party notice provider, as a way of proving that documents were transmitted for notice purposes. This practice has been followed in this case.

The first proof of service for this matter has been executed by the attorney who filed this matter. The proof states that the attorney "cause[d] a copy of the following documents . . . to be served for delivery by the United States Postal Service, via First Class United States Mail" The proof further explains that the attorney "caused these documents to be served by utilizing the services of BK Attorney Services, LLC"

The proof then attaches a copy of an additional proof of service. The second proof shows that notice was sent by mailing a list of documents identified to the persons or entities enumerated on the attached mailing matrix exhibit. This proof clarifies that the person signing the proof served, i.e., transmitted by first class mail, the documents to provide notice to respondents.

First Proof of Service

For matters requiring notice to persons or entities, the local rules require that a proof of service be filed showing that such notice was served. LBR 9014-1(e)(2). (The term service in this context means transmission of documents in the manner required for notices by the Rules and not formal service as required under Rule 7004.) The proof is an affidavit. See Fed. R. Civ. P. 4(1)(1); James M. Wagstaffe, William W. Schwarzer & Hon. A. Wallace Tashima, *Federal Civil Procedure Before Trial* ¶ 5:314, at 5-78 (rev. 2015). As an affidavit, the proof must be executed by a person who satisfies the personal knowledge requirement of Federal Rule of Evidence 602. See *id.*; see also *Thomas v. Deutsche Bank Nat. Trust*, No. C 12-00472 CRB, 2012 WL 821973, at *1 n.2 (N.D. Cal. Mar. 9, 2012).

Thus, the person signing a proof cannot state that the person caused service (or transmission of notice) by a third party who performed the service. See *Ning Ye v. Holder*, 644 F. Supp. 2d 112, 120-21 (D.D.C. 2009). "This is not competent proof of service because such proof must be made by affidavit of the server." *Id.* at 121 (citing Fed. R. Civ. P. 4(1)(1)). Indeed, by analogy, Federal Rule of Civil Procedure 4(1) applicable in adversary proceedings requires the proof to be by the server's affidavit. In the notice context, this means that the proof showing transmission of the notice must be made by the person actually effectuating the transmission of the documents into the U.S. mail.

Here, the first proof of service for notice of this matter, executed by counsel, is invalid. The person executing the proof lacks the

requisite personal knowledge of the attested facts because that person is not the "server," i.e., the person actually effectuating the notice by placing the documents in the U.S. mail. The person essentially has stated that someone else transmitted the documents—BK Attorney Services, LLC.

Second Proof of Service

The second proof of service does appear facially valid in the absence of evidence by a respondent showing its invalidity. The person signing the proof on behalf of BK Attorney Services, LLC caused the documents to be served to the parties on the mailing matrix exhibit. Thus, the person signing the proof is the "server" and appears to have personal knowledge of the facts relating to the transmission of the notice as required by Federal Rule of Evidence 602. See Fed. R. Civ. P. 4(1)(1) (a proof of service is an affidavit); see also Wagstaffe, Schwarzer & Tashima, *supra*, ¶ 5:314, at 5-78 (rev. 2015).

CONFIRMATION

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

The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

20. [14-16131](#)-A-13 CHARLTON/LAURA PROSSER MOTION TO CONFIRM PLAN
RS-3 7-22-15 [[47](#)]
CHARLTON PROSSER/MV
RICHARD STURDEVANT/Atty. for dbt.

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

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. In addition, the debtors have not received notice. See Fed. R. Bankr. P. 2002(b) (requiring notice to debtors).

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.

21. [15-10034](#)-A-13 LORI SILVA MOTION TO DISMISS CASE
MHM-2 8-4-15 [[46](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

22. [15-10034](#)-A-13 LORI SILVA MOTION TO CONFIRM PLAN
RSW-1 7-17-15 [[36](#)]
LORI SILVA/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

23. [15-12537](#)-A-13 ANNIE ROBINSON
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
8-11-15 [[27](#)]

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(2); no 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). 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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has also failed to commence making plan payments. §§ 1307(c)(4), 1326(a)(1)(A).

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.

24. [15-10642](#)-A-13 ARISTEO RODRIGUEZ AND
MHM-1 ESTHER ALCANTAR
MICHAEL MEYER/MV
RABIN POURNAZARIAN/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
6-26-15 [[41](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [15-10043](#)-A-13 JON/KATHLEEN QUIJADA MOTION TO CONFIRM PLAN
NES-3 7-20-15 [[65](#)]
JON QUIJADA/MV
NEIL SCHWARTZ/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 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.

26. [15-12046](#)-A-13 JEFFREY/ANGELINA OBJECTION TO DEBTOR'S CLAIM OF
MHM-1 JORGENSEN EXEMPTIONS
MICHAEL MEYER/MV 8-5-15 [[18](#)]
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Objection: Objection to Claim of Exemptions

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

BACKGROUND

The trustee objects to the debtors' claim of exemption in stock worth \$6000 under Cal. Civ. Proc. Code § 704.115(a)(1)-(2), (b). The trustee also objects to the debtors' claim of exemption in \$3000 in a bank checking account (California Bank & Trust) under § 704.070.

Recently, a bankruptcy court has reasoned that "the burden of proof prescribed by California statute regarding contested claims of exemption is substantive and must be applied by bankruptcy courts. Hence, Rule 4003(c) offends the Bankruptcy Rules Enabling Act with respect to state-law exemptions and must give way to the state statute." *In re Tallerico*, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015). The state statute discussed in this case generally places the burden of proof on the claimant in a hearing in state court under section 703.580(b).

But the court need not decide this matter based on the burden of proof or whether this court will follow *In re Tallerico* at this time. The court resolves this matter by default given the lack of a dispute about the facts. And the debtors' Schedule C facially does not show entitlement to the exemptions claimed.

STOCK

The debtor's Schedule C exempts stock in Rio Tinto Minerals under a heading "Stock and Interests in Businesses." (The court takes judicial notice of Schedule C filed on the docket in debtor's case and of its contents.) Under a separate heading, the debtor also exempts interests in a 401(k) called "Rio Tinto Minerals 401K, and this exemption is under a heading "Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans." Thus, the debtor has clearly categorized the stock at issue as merely stock and not stock held in some sort of retirement vehicle or stock payable as a retirement benefit.

Section 704.115 applies to retirement benefits and amounts held and controlled by private retirement plans as defined in § 704.115(a). Section 704.115(b) applies to all amounts held, controlled or in process of distribution by a private retirement plan, for the payment of certain benefits. These subsections of § 704.115 are therefore inapplicable based on the face of the debtor's claim. The debtor's claim in no way indicates that the stock is held in a retirement account or plan. Schedule C lists retirement assets separately and under a different heading expressly covering retirement vehicles, and from this fact, the court infers that the stock listed under the heading for stock and interests in businesses is not held in a retirement account. And stock held merely as stock does not fall within the scope of the exemption under § 704.115 for certain retirement benefits.

FUNDS IN CHECKING ACCOUNT

The debtors' Schedule C again facially does not permit the exemption claimed. The description of the asset is "California Bank and Trust, Lancaster, CA - Checking." The amount is \$3000. This asset description does not indicate that the funds are paid earnings. Therefore, the paid earnings exemption statute, § 704.070 is inapplicable. Because the description of property shows that the property constitutes merely funds in a bank account and not earnings, or even earnings that were paid during the 30-day period ending on the petition date, the paid-earnings exemption is facially inapplicable to the property described.

27. [15-12047](#)-A-13 CHARLES/MIRIAM BALDWIN
RSW-1
CHARLES BALDWIN/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF THE WEST
8-11-15 [[24](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: LBR 9014-1(f) (2); no 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). 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 strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b) (2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b) (2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 28410 Delaware Dr., Tehachapi, CA.

The court values the collateral at \$199,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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 real property collateral 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 real property collateral located at 28410 Delaware Dr., Tehachapi, CA, has a value of \$199,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

28. [12-16549](#)-A-13 VANESSA WARD
RSW-3
VANESSA WARD/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO MODIFY PLAN
7-24-15 [[75](#)]

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 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).

MODIFICATION OF PLAN

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

NOTICE PROCEDURES

Background

This court does not accept the practice in this district of cobbling together multiple proofs of service, one executed by a person in the attorney's office and one executed by a third-party notice provider, as a way of proving that documents were transmitted for notice purposes. This practice has been followed in this case.

The first proof of service for this matter has been executed by the attorney who filed this matter. The proof states that the attorney "cause[d] a copy of the following documents . . . to be served for delivery by the United States Postal Service, via First Class United States Mail" The proof further explains that the attorney

"caused these documents to be served by utilizing the services of BK Attorney Services, LLC"

The proof then attaches a copy of an additional proof of service. The second proof shows that notice was sent by mailing a list of documents identified to the persons or entities enumerated on the attached mailing matrix exhibit. This proof clarifies that the person signing the proof served, i.e., transmitted by first class mail, the documents to provide notice to respondents.

First Proof of Service

For matters requiring notice to persons or entities, the local rules require that a proof of service be filed showing that such notice was served. LBR 9014-1(e)(2). (The term service in this context means transmission of documents in the manner required for notices by the Rules and not formal service as required under Rule 7004.) The proof is an affidavit. See Fed. R. Civ. P. 4(1)(1); James M. Wagstaffe, William W. Schwarzer & Hon. A. Wallace Tashima, *Federal Civil Procedure Before Trial* ¶ 5:314, at 5-78 (rev. 2015). As an affidavit, the proof must be executed by a person who satisfies the personal knowledge requirement of Federal Rule of Evidence 602. See *id.*; see also *Thomas v. Deutsche Bank Nat. Trust*, No. C 12-00472 CRB, 2012 WL 821973, at *1 n.2 (N.D. Cal. Mar. 9, 2012).

Thus, the person signing a proof cannot state that the person caused service (or transmission of notice) by a third party who performed the service. See *Ning Ye v. Holder*, 644 F. Supp. 2d 112, 120-21 (D.D.C. 2009). "This is not competent proof of service because such proof must be made by affidavit of the server." *Id.* at 121 (citing Fed. R. Civ. P. 4(1)(1)). Indeed, by analogy, Federal Rule of Civil Procedure 4(1) applicable in adversary proceedings requires the proof to be by the server's affidavit. In the notice context, this means that the proof showing transmission of the notice must be made by the person actually effectuating the transmission of the documents into the U.S. mail.

Here, the first proof of service for notice of this matter, executed by counsel, is invalid. The person executing the proof lacks the requisite personal knowledge of the attested facts because that person is not the "server," i.e., the person actually effectuating the notice by placing the documents in the U.S. mail. The person essentially has stated that someone else transmitted the documents—BK Attorney Services, LLC.

Second Proof of Service

The second proof of service does appear facially valid in the absence of evidence by a respondent showing its invalidity. The person signing the proof on behalf of BK Attorney Services, LLC caused the documents to be served to the parties on the mailing matrix exhibit. Thus, the person signing the proof is the "server" and appears to have personal knowledge of the facts relating to the transmission of the notice as required by Federal Rule of Evidence 602. See Fed. R. Civ. P. 4(1)(1) (a proof of service is an affidavit); see also Wagstaffe, Schwarzer & Tashima, *supra*, ¶ 5:314, at 5-78 (rev. 2015).

29. [15-11956](#)-A-13 DARYL/ESME SOWERS
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
7-27-15 [[24](#)]

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(2); no 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). 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

Businesses Documents / Records

The trustee asserts that the debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The trustee has not been provided with broken down profit and loss statements and corporate income tax returns for 2013 and 2014.

The trustee asked the debtors for a completed business case questionnaire and documentation requested therein by a request sent May 15, 2015. But the trustee asserts that the debtors have not provided any business case questionnaire for their businesses.

Although the debtors' Schedule B asserts that the debtors do not have any businesses, the trustee asserts that the debtors' income tax returns show business income and expenses as a sole proprietorship in 2014. (Debtor's schedule J, line 8a., does not appear to show business income other than perhaps \$29.71 per month from Google AdSense.)

The Statement of Financial Affairs (SOFA) does indicate some limited income from businesses in 2013 and 2014 at question 1. The SOFA also indicates at item no. 18 the different businesses owned by the debtors. Dande Land LLC shows a beginning and ending date of 2/5/2013 - 5/1/2015. Bakersfield Motors shows a beginning and ending date of 9/3/2008 - 7/27/2014. Thus, it would appear that the debtors have information to provide to the trustee regarding their businesses.

Nevertheless, even if the debtors do not have a current operating business, they should have responded to the trustee's request and completed the business case questionnaire to the best of their ability and indicated that no current businesses were operating.

For the reasons stated in the motion, cause exists to dismiss the case as the debtors are failing to cooperate with the trustee, § 521(a)(3), causing unreasonable delay that is prejudicial to creditors *Id.* § 1307(c)(1).

No Feasible Plan Possible

As the trustee points out, no feasible plan is possible in this case. Schedule J shows negative monthly net income. Given the inability to propose a feasible plan together with the fact that this case was filed May 14, 2015 (over three months ago), the court finds that the continuance of this case constitutes unreasonable delay that is prejudicial to creditors given that a viable plan is not in prospect.

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.

30. [15-11956](#)-A-13 DARYL/ESME SOWERS
MHM-2

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER

8-12-15 [[29](#)]

No tentative ruling.

31. [15-10162](#)-A-13 JAIME/RUTH GARZA
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
8-5-15 [[137](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case on grounds that no plan has been confirmed even though the case has been pending since January 20, 2015. This case has been pending approximately 225 days as of the date of this hearing. This constitutes unreasonable delay by the debtors that is prejudicial to creditors. 11 U.S.C. § 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 this chapter 13 case has been presented to the court. Having considered the motion, opposition and heard oral argument, if any, presented at the hearing,

IT IS ORDERED that the motion is granted given the debtor's failure to confirm a chapter 13 plan since this case was filed January 20, 2015. The court hereby dismisses this case.

32. [15-10162](#)-A-13 JAIME/RUTH GARZA
PK-5

CONTINUED MOTION FOR
COMPENSATION FOR PATRICK
KAVANAGH, DEBTORS ATTORNEY(S)
5-12-15 [[98](#)]

PATRICK KAVANAGH/Atty. for dbt.

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, Patrick Kavanagh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$8240.50 and reimbursement of expenses in the amount of \$184.28.

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.

Patrick Kavanagh'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 \$8240.50 and reimbursement of expenses in the amount of \$184.28. The aggregate allowed amount equals \$8424.78. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$8424.78 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.

33. [15-12562](#)-A-13 GERARDO RIOS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-31-15 [[21](#)]

Tentative Ruling

If the past due filing fee installments in the amount of \$156 have not been paid in full by the time of the hearing, the case will be dismissed.

34. [15-12562](#)-A-13 GERARDO RIOS
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
8-11-15 [[26](#)]

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(2); no 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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The court infers that the trustee requested the documents that the debtor has failed to provide. (The trustee sent a letter requesting documents, which impliedly were the documents that constitute the "Trustee Packet." Clark Decl. ¶ 6. In the future, the court prefers a statement in the motion that the debtor failed to provide the documents that the trustee requested.)

The debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343. And the debtor failed to complete the credit counseling requirement in the 180-day period *preceding* the petition, which makes the debtor ineligible to be a debtor. *Id.* § 109(h).

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 and based on ineligibility under § 109(h). The court hereby dismisses this case.

35. [15-12566](#)-A-13 RAUL/VICKY CERDA
SJS-1
TREASURER/TAX COLLECTOR FOR
KERN COUNTY/MV
SUSAN SALEHI/Atty. for dbt.
NICOLE MISNER/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY TREASURER/TAX COLLECTOR
FOR KERN COUNTY
8-18-15 [[28](#)]

Final Ruling

The plan withdrawn, the objection is overruled as moot.

36. [15-12566](#)-A-13 RAUL/VICKY CERDA
SJS-1
RAUL CERDA/MV
SUSAN SALEHI/Atty. for dbt.
WITHDRAWN
- MOTION TO CONFIRM PLAN
7-18-15 [[22](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

37. [14-14971](#)-A-7 CRYSTAL MARTIN
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
- MOTION TO DISMISS CASE
7-15-15 [[37](#)]

Final Ruling

The case converted to chapter 7, the motion is denied as moot.

38. [15-11771](#)-A-13 ODIS/LAURIE BROWN
PK-7
- CONTINUED MOTION FOR
COMPENSATION FOR PATRICK
KAVANAGH, DEBTORS ATTORNEY(S)
7-8-15 [[71](#)]
- PATRICK KAVANAGH/Atty. for dbt.

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, Patrick Kavanagh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$6270.00 and reimbursement of expenses in the amount of \$56.26.

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.

Patrick Kavanagh'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 \$6270.00 and reimbursement of expenses in the amount of \$56.26. The aggregate allowed amount equals \$6326.26. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$6326.26 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.

39. [15-11477](#)-A-13 JOSHUA WILLIAMS
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
7-8-15 [[27](#)]

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 chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 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 \$2630.

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 because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

40. [14-15883](#)-A-13 MARCHELETTA MADISON
MARCHELETTA MADISON/MV
MARCHELETTA MADISON/Atty. for mv.
DISMISSED

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
4-16-15 [[65](#)]

Final Ruling

The case dismissed, the matter is dropped from calendar as moot.

41. [15-12283](#)-A-13 RYAN MCKAY ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-12-15 [[52](#)]

PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

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

42. [15-12283](#)-A-13 RYAN MCKAY MOTION TO DISMISS CASE
MHM-1 7-14-15 [[37](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

43. [15-12283](#)-A-13 RYAN MCKAY MOTION TO CONFIRM PLAN
PK-4 7-22-15 [[41](#)]
RYAN MCKAY/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

44. [12-13093](#)-A-13 LONNIE/BROOK HAYES MOTION TO DISMISS CASE
CDR-1 7-30-15 [[50](#)]
CALIFORNIA FRANCHISE TAX
BOARD/MV
PATRICK KAVANAGH/Atty. for dbt.
CRAIG RUST/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

45. [12-13093](#)-A-13 LONNIE/BROOK HAYES MOTION TO DISMISS CASE
MHM-2 7-15-15 [[45](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

46. [15-11995](#)-A-13 JIMMY/GWENDOLYN CANNON
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
8-12-15 [[38](#)]

No tentative ruling.