

**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: OCTOBER 7, 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. [14-15902](#)-A-13 BUFORD LAND MOTION TO VALUE COLLATERAL OF
PK-5 BGK INVESTMENTS, INC.
BUFORD LAND/MV 8-19-15 [[118](#)]
PATRICK KAVANAGH/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

2. [14-15902](#)-A-13 BUFORD LAND MOTION TO CONFIRM PLAN
PK-6 8-19-15 [[125](#)]
BUFORD LAND/MV
PATRICK KAVANAGH/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

3. [13-11803](#)-A-13 JERZY BARANOWSKI MOTION TO MODIFY PLAN
PK-5 8-19-15 [[163](#)]
JERZY BARANOWSKI/MV
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

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

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

4. [15-12403](#)-A-13 RIGOBERTO RAMIREZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-21-15 [[35](#)]

DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

5. [15-12403](#)-A-13 RIGOBERTO RAMIREZ MOTION TO DISMISS CASE
MHM-2 8-26-15 [[37](#)]
MICHAEL MEYER/MV
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

6. [12-19905](#)-A-13 JEFFREY/JANET PAHLOW MOTION TO DISMISS CASE
MHM-1 8-14-15 [[79](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

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 \$2662.

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 \$2662. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

7. [10-63707](#)-A-13 JOSE/MARGARITA GAYTAN
PWG-5
JOSE GAYTAN/MV

MOTION FOR EXEMPTION FROM
FINANCIAL MANAGEMENT COURSE,
EXCUSE DEBTOR AND JOINT DEBTOR
FROM THE REQUIREMENT OF 11
U.S.C. SECTION 1328 CERTIFICATE
AND DEBTOR'S 1328 CERTIFICATE
OF CHAPTER 13 REGARDING 11 USC
SECTION 522 (Q)
9-2-15 [[55](#)]

PHILLIP GILLET/Atty. for dbt.

Tentative Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted in part, denied in part

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).

CERTIFICATION REQUIREMENTS UNDER § 1328

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).

One of the debtors named in the motion has died. The other debtor is no longer able to manage his affairs or meaningfully complete these certificates.

Rule 1016 is applicable to the joint debtor who has died in this case and to the joint debtor who has become incapable of managing his affairs. Rule 1016 provides: "[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 both debtors 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 and waive the requirement that the debtors file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

POST-PETITION PERSONAL FINANCIAL MANAGEMENT COURSE

The motion also requests a waiver of the requirement to complete, after the petition date, the personal financial management course described in § 111. See 11 U.S.C. § 1328(g)(1).

The post-petition requirement does not apply when the debtor is a person described in § 109(h)(4). See 11 U.S.C. § 1328(g)(2). The court finds that both debtors qualify as debtors who suffer from incapacity and the court grants a waiver of the § 1328(g)(1) requirement for both of them.

SECTION 341 CREDITORS' MEETING

The motion (first paragraph) asks the court for a waiver of the requirement to attend the § 341 meeting of creditors. The court notes the docket entry stating that the creditors' meeting was concluded in early 2011. This request appears to be inadvertently made. The court will deny it.

INSTRUCTIONS FOR ORDER

The order shall state the following: "It is ordered that the motion is granted in part and denied in part. The court waives the requirement that [deceased debtor's name and incapacitated debtor's name] complete and file certifications concerning compliance with § 1328. The court also waives the requirement that they complete an instructional course concerning personal financial management as required by § 1328(g). And the court finds the continued administration of their estates is possible and in the best interests of the parties. The court denies the motion as to the request to waive a § 341 creditors' meeting."

8. [15-10007](#)-A-13 GEORGE/SILVIA MARTINEZ MOTION TO DISMISS CASE
MHM-2 7-30-15 [[35](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

9. [15-10007](#)-A-13 GEORGE/SILVIA MARTINEZ MOTION TO CONFIRM PLAN
RSW-2 8-4-15 [[43](#)]
GEORGE MARTINEZ/MV
ROBERT WILLIAMS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

10. [14-10027](#)-A-13 DANIEL/GAIL BOWMAN MOTION TO DISMISS CASE
MHM-1 8-14-15 [[54](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is denied as moot.

11. [15-11527](#)-A-13 WALKER/ALECIA MURRELL MOTION TO DISMISS CASE
MHM-1 9-4-15 [[25](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Continued to December 2, 2015, at 9:00 a.m.

Order: Civil minute order

The trustee moves to dismiss under § 1307(c)(1) for failure to set a modified plan for hearing with notice to creditors. This case was filed on April 21, 2015. The court continues the hearing on this motion to December 2, 2015, at 9:00 a.m. A plan was filed on September 28, 2015 entitled "Chapter 13 Plan - First Modified" at ECF No. 31. If this plan is not confirmed, the court will dismiss this case for unreasonable delay under § 1307(c)(1).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to December 2, 2015, at 9:00 a.m. A plan was filed on September 28, 2015 entitled "Chapter 13 Plan - First Modified" at ECF No. 31. If this plan is not confirmed, the court will dismiss this case for unreasonable delay under § 1307(c)(1).

12. [14-16131](#)-A-13 CHARLTON/LAURA PROSSER MOTION TO DISMISS CASE
MHM-2 8-5-15 [[55](#)]
MICHAEL MEYER/MV
RICHARD STURDEVANT/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Continued to December 2, 2015, at 9:00 a.m.

Order: Civil minute order

The trustee moves to dismiss under § 1307(c)(1) and (3) for failure to confirm a chapter 13 plan. This case was filed on December 31, 2014. The court continues the hearing on this motion to October 22, 2015, at 9:00 a.m. If the Third Amended Plan is not confirmed, the court will dismiss this case.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to October 22, 2015, at 9:00 a.m. If the Third Amended Plan is not confirmed, the court will dismiss this case for unreasonable delay under § 1307(c)(1).

13. [14-14537](#)-A-13 DENNIS/LASHANE WILLIAMS MOTION TO DISMISS CASE
MHM-2 8-18-15 [[41](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is denied as moot.

14. [15-12537](#)-A-13 ANNIE ROBINSON ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
DISMISSED 8-31-15 [[34](#)]

Final Ruling

The case dismissed, the order to show cause is discharged.

15. [15-12638](#)-A-13 RICKY/TAMERA RICE
MHM-1
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
8-11-15 [[31](#)]

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Continued to December 2, 2015, at 9:00 a.m.

Order: Civil minute order

The trustee moves to dismiss under § 1307(c)(1) for failure to set a plan for hearing with notice to creditors. The debtor has noticed a motion for hearing on confirmation of a chapter 13 plan. The hearing is for December 2, 2015. If the plan that is set for hearing on December 2, 2015, at 9:00 a.m. is not confirmed, the court will dismiss this case.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to December 2, at 9:00 a.m. If the plan that is set for hearing on December 2, 2015, at 9:00 a.m. is not confirmed, the court will dismiss this case for unreasonable delay under § 1307(c)(1).

16. [15-12639](#)-A-13 DAVID/MONICA GARZA
MHM-1
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
8-11-15 [[32](#)]

No tentative ruling.

17. [12-19240](#)-A-13 ELIAZAR SANCHEZ
LKW-5

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
8-14-15 [[90](#)]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Leonard K. Welsh, debtor's counsel, prays third interim compensation of \$2,190.00 and costs of \$62.92 to be paid directly by the debtor. Chapter 13 trustee Michael H. Meyer opposes the application contending that approving the application will jeopardize plan feasibility. Meyer does not contend that the requested fees are not "reasonable compensation" under 11 U.S.C. § 330(a). The applicant has the better side of the argument.

PRELIMINARY MATTERS

Before turning to the merits of the application, two matters warrant comment. First, the debtor's plan specifically contemplates payment of administrative expenses outside the plan, if the applicant consents. Chapter 13 Plan § 2.07, filed October 31, 2012, ECF # 5 (Approved administrative expenses shall be paid in full through this plan except to the extent a claim agrees otherwise or 11 U.S.C. § 1326(b)(3)(B) is applicable"); Order Confirming Chapter 13 Plan, filed March 4, 2015, ECF #42. Applicant Welsh has consented.

Second, the trustee cites no authority for the proposition that the debtor's ability to pay administrative expenses, through or outside the plan, is to be considered in awarding fees. Nor is there any such authority. 11 U.S.C. § 330(a)(1), (3), (4)(B).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Leonard K. Welsh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,190.00 and reimbursement of expenses in the amount of \$62.92.

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.

Leonard K. Welsh'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 \$2,190.00 and

reimbursement of expenses in the amount of \$62.92. The aggregate allowed amount equals \$2,252.92. As of the date of the application, the applicant held a retainer in the amount of \$0.00.

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 shall not pay the fees allowed by this order and said monies shall be paid directly to Leonard K. Welsh by Eliazar Sanchez.

18. [13-14441](#)-A-13 STEPHEN/TERESA GALVAN MOTION TO DISMISS CASE
MHM-2 8-14-15 [[43](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is denied as moot.

19. [15-12047](#)-A-13 CHARLES/MIRIAM BALDWIN MOTION TO DISMISS CASE
MHM-1 9-15-15 [[33](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is denied as moot.

20. [15-11048](#)-A-13 ELISEO CHAVEZ MOTION TO DISMISS CASE
MHM-1 8-18-15 [[20](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been

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 \$4412.

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 \$4412. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

- The motion withdrawn, the matter is denied as moot.

23. [15-12850](#)-A-13 BRUCE/VICTORIA DAINS
MHM-2
BRUCE DAINS/MV
SUSAN SALEHI/Atty. for dbt.

COUNTER MOTION FOR ADDITIONAL
TIME TO FILE MISSING
PRE-PETITION TAX RETURNS
9-20-15 [[29](#)]

No tentative ruling.

24. [15-12850](#)-A-13 BRUCE/VICTORIA DAINS
MHM-3
MICHAEL MEYER/MV
SUSAN SALEHI/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-8-15 [[25](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

25. [15-12854](#)-A-13 KEVIN DAVEY
FRANCISCO ALDANA/Atty. for dbt.
\$156 INSTALLMENT FEE PAID

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-25-15 [[20](#)]

Final Ruling

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

26. [15-12854](#)-A-13 KEVIN DAVEY
MHM-1
KEVIN DAVEY/MV
FRANCISCO ALDANA/Atty. for dbt.

MOTION TO DISMISS CASE
9-9-15 [[26](#)]

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 debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

The debtor has failed to provide credit counseling certificates. *Id.* § 109(h)(1).

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.

27. [14-12360](#)-A-13 SERGIO BUENO
MHM-3
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
8-18-15 [[91](#)]

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 \$1926.44.

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 \$1926.44. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

28. [15-10162](#)-A-13 JAIME/RUTH GARZA MOTION TO CONFIRM PLAN
PK-6 8-11-15 [[146](#)]
JAIME GARZA/MV
PATRICK KAVANAGH/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

29. [15-12562](#)-A-13 GERARDO RIOS ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-31-15 [[36](#)]
DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

30. [15-12562](#)-A-13 GERARDO RIOS MOTION TO DISMISS CASE
MHM-2 8-26-15 [[32](#)]
MICHAEL MEYER/MV
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

31. [15-12566](#)-A-13 RAUL/VICKY CERDA
SJS-2
RAUL CERDA/MV
SUSAN SALEHI/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
8-26-15 [[38](#)]

Tentative Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

NOTICE INSUFFICIENT

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.

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.

CIVIL MINUTE ORDER

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

The debtors' motion to confirm their chapter 13 plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

32. [15-11771](#)-A-13 ODIS/LAURIE BROWN

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-3-15 [[113](#)]

PATRICK KAVANAGH/Atty. for dbt.
FINAL INSTALLMENT PAID
9/14/15

Final Ruling

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

33. [15-13071](#)-A-13 ADDISON CRAFTS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-8-15 [[29](#)]

Tentative Ruling

Unless the installment payments due September 2, 2015, and October 2, 2015, in the total amount of \$156 have been paid by the time of the hearing, the case will be dismissed.

34. [15-13071](#)-A-13 ADDISON CRAFTS
RWR-1
TULARE COUNTY TAX COLLECTOR/MV
RUSSELL REYNOLDS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-3-15 [[22](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 34809 Hwy 190, Springville, CA

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).

RELIEF FROM STAY UNDER § 362(d) (1)

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.*

The property is tax defaulted for the year 2004/2005. It has been tax defaulted since 2004/2005 and no payments are being made in an attempt to clear the obligation. Further, the debtor has filed a chapter 13 plan. This plan does not propose to pay the obligation. Schedule D, moreover, is blank, and does not include any secured obligations, much less the obligation held by the movant. These facts constitute cause for stay relief under § 362(d)(1).

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief, except as stated below, will be awarded.

IN REM RELIEF UNDER § 362(d)(4)

Legal Standard

Section 362(d)(4) authorizes binding, in rem relief from stay with respect 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.*

Judicial Notice

The court takes judicial notice of all documents filed in the present case, and their contents, and all documents filed in the debtor's 3 prior cases in this court and their contents. Fed. R. Evid. 201. The court presumes their authenticity in the absence of an objection.

Tax Default

The movant asserts that the subject property is tax defaulted for the year 2004/2005. It has been tax defaulted since 2004/2005 and no payments are being made in an attempt to clear the obligation. The property was first noticed for sale in 2012. On or about January 6, 2012, the Tulare County Tax Collector recorded a Notice of Power to Sell Tax Defaulted Property.

Case No. 12-12214

After the notice of sale was recorded in early 2012, the deadline to pay the tax was March 14, 2012 at 5:00 p.m. On March 14, 2012, the debtor filed a chapter 13 bankruptcy petition bearing case no. 12-

12214. This case was dismissed by order entered at docket no. 29 in that case. The order states that the dismissal was for cause shown. The underlying motion reveals that the dismissal was on grounds of failure to provide the trustee with required and requested documentation and unreasonable delay by the debtor that was prejudicial to creditors.

The court further notes that no plan was confirmed in that case, and the plan on file contained no reference to the movant's secured claim. Moreover, no creditors or claims were classified in that plan, and class 7 leaves blank the amount of unsecured claims, though such claims are to be paid an 80% dividend.

Case No. 13-15158

The movant contends that on the eve of the tax sale scheduled for August 2013, the debtor filed another chapter 13 bankruptcy, Case No. 13-15158. The movant asserts that the debtor never appeared at a meeting of creditors or made a plan payment.

The court has reviewed the order dismissing this case and the underlying dismissal motion. This order was entered at docket 38 and shows dismissal for cause shown. The grounds brought for the dismissal were that (1) payments to the trustee were not current under the debtor's proposed plan, and (2) the debtor failed to appear at the § 341 meeting of creditors.

The plan filed in that case is substantially incomplete. The movant's secured claim is not classified. No claims of any creditor are proposed to be paid.

Case No. 14-13928

Like the other cases, case no. 14-13928 was dismissed with no reorganization occurring and no apparent intent to reorganize on the debtor's part. The debtor filed this case on the eve of a tax sale on August 2014. This case was filed on August 5, 2014.

The order dismissing this case was entered on October 23, 2014 at docket no. 38. The court's findings at docket no. 35 reveal that the debtor failed to appear at the meeting of creditors, failed to provide the trustee with documentation necessary to fulfill his statutory duties, failed to file his plan with the petition and to set a hearing on confirmation of the plan filed, and failed to file a plan that was completed in all necessary respects. The court dismissed the case for unreasonable delay that was prejudicial to creditors.

Present Case No. 15-13071

In the present case, the debtor's behavior does not differ from his prior cases. The movant's tax sale had been renoticed to have occurred on August 6, 2015. The present case was filed on August 3, 2015. The debtor dropped off a copy of the petition at the Tulare County Tax Collector office.

The plan is substantially incomplete and does not contain a percentage dividend for unsecured claims. No creditors or claims are classified in Classes 1 through 6 and the movant's secured claim does not appear in the plan.

Additionally, the debtor has failed to schedule the movant's secured claim on Schedule D. No secured claims appear on Schedule D (docket 11) even though Schedule A (docket 14) shows a secured claim of \$125,625.00.

Conclusion

The court finds that the filing of the petition in this case was part of a scheme to hinder or delay the debtor's creditors, including the Tulare County Tax Collector. The debtor's present case, when considered together with the facts surrounding his prior 3 cases, reveal that the debtor's filings have not been in good faith and have been filed without an intent to reorganize and comply with the obligations of a debtor in bankruptcy.

The timing of the filing of the debtor's cases reveal that he has filed bankruptcy on the eve of several scheduled tax sales. Because the three prior cases were all dismissed and show that the debtor lacked any real intent to reorganize or comply with his duties under the Code, the court infers that the filing of the prior three cases and the present case were for the primary purpose of hindering and delaying the movant creditor's attempts to recover on its tax obligation.

Lastly, the debtor's scheme to hinder and delay the movant creditor involved multiple bankruptcy filings affecting the subject property. Accordingly, in rem relief is warranted. The order shall be recorded in accordance with state law in order to be binding in future cases under this Title that affect the property.

35. [15-11477](#)-A-13 JOSHUA WILLIAMS
MHM-2
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
DISMISSED

MOTION TO DISMISS CASE
8-12-15 [[33](#)]

Final Ruling

The case dismissed, the motion is denied as moot.

36. [14-11379](#)-A-13 ROBERTA CUMBERLAND
MHM-3
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
8-11-15 [[86](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

37. [15-12381](#)-A-13 BENJAMIN GALVAN
MHM-1
MICHAEL MEYER/MV
VINCENT GORSKI/Atty. for dbt.
WITHDRAWN
MOTION TO DISMISS CASE
8-11-15 [[24](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

38. [14-11683](#)-A-13 JOSE SANCHEZ
MHM-1
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING
MOTION TO DISMISS CASE
8-18-15 [[39](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [13-10685](#)-A-13 GEORGE/ELISA RUBIO
MHM-1
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.
RESCHEDULED HEARING RE: MOTION
TO DISMISS CASE
5-14-15 [[69](#)]

[The hearing on this matter will follow the hearing on the debtors' motion to modify the plan in this case having docket control no. PWG-4.]

No tentative ruling.

40. [13-10685](#)-A-13 GEORGE/ELISA RUBIO
PWG-4
GEORGE RUBIO/MV
PHILLIP GILLET/Atty. for dbt.
RESCHEDULED HEARING RE: MOTION
TO MODIFY PLAN
9-8-15 [[82](#)]

No tentative ruling.

41. [15-12891](#)-A-13 LUCIA/MICHAEL LOPEZ
ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-27-15 [[23](#)]

Tentative Ruling

Unless the installment payments due August 24, 2015, and September 21, 2015, in the total amount of \$156 have been paid by the time of the hearing, the case will be dismissed.

42. [15-12891](#)-A-13 LUCIA/MICHAEL LOPEZ MOTION TO DISMISS CASE
MHM-1 9-9-15 [[30](#)]
MICHAEL MEYER/MV

No tentative ruling.

43. [15-12797](#)-A-13 CLAUDIA PEREZ MOTION TO DISMISS CASE
MHM-1 9-9-15 [[17](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

44. [15-12798](#)-A-13 RICHARD/LINDA DAVES MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 8-18-15 [[14](#)]
ROBERT WILLIAMS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

MOOTNESS OF REQUEST FOR STAY RELIEF

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the moving party's claim in Class 3. Class 3 secured claims are "secured claims satisfied by the surrender of collateral." Section 2.10 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its rights against its collateral."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

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

Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services's motion for relief from the automatic stay has been presented to the court. Having considered the motion, and having heard oral argument presented at the hearing, if any,

45. [15-13716](#)-A-13 RIGOBERTO GONZALEZ MOTION TO EXTEND AUTOMATIC STAY
PK-2 9-30-15 [[18](#)]
RIGOBERTO GONZALEZ/MV
PATRICK KAVANAGH/Atty. for dbt.

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.