

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

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

**PRE-HEARING DISPOSITIONS**

**DAY: WEDNESDAY**  
**DATE: NOVEMBER 4, 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. [15-10003](#)-A-13 ALLISON SMITH MOTION TO DISMISS CASE  
MHM-2 9-14-15 [[38](#)]  
MICHAEL MEYER/MV  
SUSAN SALEHI/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

2. [11-62705](#)-A-7 DONALD NEUFELD MOTION TO DISMISS CASE  
MHM-2 9-14-15 [[90](#)]  
MICHAEL MEYER/MV  
LEONARD WELSH/Atty. for dbt.

**Final Ruling**

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

3. [15-12408](#)-A-13 MONIQUE BOOKOUT MOTION TO DISMISS CASE  
MHM-1 9-11-15 [[33](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

4. [15-10914](#)-A-13 RICHARD/SUSAN BILL  
MHM-1  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
9-25-15 [[77](#)]

*[The hearing on this matter will follow the confirmation hearing in this case having docket control no. RSW-3.]*

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Denied as moot

**Order:** Civil minute order

If the court grants the debtor's motion to confirm a chapter 13 plan (RSW-3) on this calendar, then the trustee's motion to dismiss for delay caused by the debtor's failure to confirm a plan will be denied as moot.

5. [15-10914](#)-A-13 RICHARD/SUSAN BILL  
RSW-3  
RICHARD BILL/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO CONFIRM PLAN  
9-22-15 [[69](#)]

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 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)(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).

### **PROCEDURE**

The debtors did not require written opposition 14 days in advance of the hearing date. Instead, the notice of hearing permits opposition to be raised at the hearing on the motion. This does not comply with the court's local rules. LBR 3015-1(d)(1) requires the notice to comply with LBR 9014-1(f)(1). In the future, counsel for the debtors must comply with this requirement. Because the motion was properly served and because 42 days' notice was provided, the court will grant the motion if no party in interest objects to confirmation at the hearing.

### **CONFIRMATION**

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.

6. [15-13716](#)-A-13 RIGOBERTO GONZALEZ  
PP-1  
MUHAMET CIFLIGU/MV  
PATRICK KAVANAGH/Atty. for dbt.  
MARGARET GARMS/Atty. for mv.  
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-7-15 [[27](#)]

**No tentative ruling.**

7. [15-11917](#)-A-13 JUSTIN/DESIREE LAY MOTION TO DISMISS CASE  
MHM-1 9-15-15 [[40](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

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

8. [15-13319](#)-A-7 BEATRICE ZAPATA MOTION TO DISMISS CASE  
MHM-1 10-9-15 [[17](#)]  
MICHAEL MEYER/MV  
CONVERTED 10/13/15

**Final Ruling**

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

9. [15-10423](#)-A-13 NICK/CHRISTINA NGIRAILILD MOTION TO DISMISS CASE  
MHM-1 9-14-15 [[39](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

10. [15-10423](#)-A-13 NICK/CHRISTINA NGIRAILILD MOTION TO DISMISS CASE  
MHM-2 9-18-15 [[46](#)]  
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 \$722.

#### **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 \$722. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

11. [14-12326](#)-A-13 GARY WRIGHT AND KIM                      MOTION TO DISMISS CASE  
MHM-3                      GRIFFIN-WRIGHT                      9-18-15 [[75](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

12. [11-16727](#)-A-13 DONNA TINDER                      MOTION TO DISMISS CASE  
MHM-3                      9-18-15 [[59](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

#### **Final Ruling**

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

13. [14-16029](#)-A-13 DAGMAR VAUGHAN  
RSW-1  
DAGMAR VAUGHAN/MV

OBJECTION TO CLAIM OF GREEN  
TREE SERVICING LLC, CLAIM  
NUMBER 13  
9-11-15 [[32](#)]

ROBERT WILLIAMS/Atty. for dbt.

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b) (2); no written opposition required

**Disposition:** Sustained

**Order:** Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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).

### **CLAIM OBJECTION**

Debtor objects to the proof of claim no. 3 filed by claimant Green Tree Servicing LLC. Debtor asserts that debtor has never missed any mortgage payments, so the proof of claim is "completely erroneous" in showing an arrearage on the date the bankruptcy was filed.

The court notes that the claim objection lists claim no. 13 as the claim to which it is directed. But no claim 13 exists on the claims register. The court deems the claim to object to Green Tree Servicing, LLC's claim which is proof of claim no. 3 on the claims register.

The claim states an arrearage amount of \$16,194.15. The debtor contends she has never missed any payments and that the loan was current when this case was filed. Thus, the court construes debtor's objection to contend that there is no basis for the liability of \$16,194.15, which includes 15 installments at \$1079.61. However, the debtor has stated only that she has never missed any house payments. She did not state that she made all payments on time. Further, the debtor has not provided any facts or proof that the prepetition fees, expenses and other charges are not due and owing. Accordingly, the court does not have a basis to disallow the prepetition fees, expenses and charges of \$2045.42 (less the "unapplied funds" of \$1399.43). See Claim No. 3, Attachment A at Part 3.

Because the debtor has offered evidence that she does not owe the arrearage liability claimed by Green Tree Servicing, LLC, in the amount of \$16,194.15, the court will sustain the objection. However, since the objection is only to the arrearage portion of the claim, the claim will be allowed to the extent of the amount not claimed as an arrearage.

### **CIVIL MINUTE ORDER**

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





The trustee is uncertain whether the debtors still attempt to claim an exemption in this stock. The addition of the word *deleted* suggests that the exemption is intended to be of no effect. But the word *deleted* by itself is facially unclear in its scope and applicability. For the sake of clarity, Schedule C should be amended to remove any amounts for this exemption item. For example, the column "Value of Claimed Exemption" should not contain a value greater than \$0.00, because when it does, this implies that an exemption is being claimed inconsistently with the court's prior order. However, the court does not address or rule on whether the \$6000 stock interest in Rio Tinto Minerals may be claimed under another exemption provision of § 704.010 *et seq.* To the extent this exemption is claimed under § 704.115(a)(1)-(2) and (b), it must reflect a \$0.00 claimed value or be removed from Schedule C entirely.

16. [15-12046](#)-A-13 JEFFREY/ANGELINA MOTION TO DISMISS CASE  
MHM-2 JORGENSEN 9-15-15 [[27](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

17. [15-12850](#)-A-13 BRUCE/VICTORIA DAINS MOTION TO CONFIRM PLAN  
SJS-1 9-22-15 [[34](#)]  
BRUCE DAINS/MV  
SUSAN SALEHI/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Continued to November 12, 2015, at 9:00 a.m.

**Order:** Not applicable

**CONTINUANCE**

No declaration has been filed in support of the motion. LBR 9014-1(d)(7) requires the motion to have been accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested.

The hearing on this matter is continued to the court's calendar in Fresno on November 12, 2015, at 9:00 a.m. At the continued hearing, if appropriate declarations have been filed no later than 7 days before the continued hearing date, the court will grant the motion.

18. [14-13352](#)-A-7 SHARON REX MOTION TO DISMISS CASE  
MHM-3 9-14-15 [[47](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
CONVERTED 10/19/15

**Final Ruling**

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

19. [10-19454](#)-A-13 DAVID/RAQUEL STEBBINS MOTION TO DISMISS CASE  
MHM-2 9-11-15 [[138](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

20. [10-19454](#)-A-13 DAVID/RAQUEL STEBBINS MOTION FOR COMPENSATION FOR  
PK-8 PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
10-13-15 [[152](#)]  
  
PATRICK KAVANAGH/Atty. for dbt.

**Tentative Ruling**

**Application:** Allowance of Final Compensation and Expense Reimbursement

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

**Disposition:** Continued to November 12, 2015, at 9:00 a.m.

**Order:** Inapplicable

The court continues the hearing on this matter to the court's Fresno calendar on November 12, 2015, at 9:00 a.m. Client consent has not been filed but may be filed no later than 7 days in advance of the hearing date.

21. [11-15455](#)-A-13 SHANNON EZELL MOTION TO DISMISS CASE  
MHM-1 9-11-15 [[53](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

22. [14-11761](#)-A-13 FRANCISCO/DIANE LOPEZ MOTION TO DISMISS CASE  
MHM-1 9-14-15 [[32](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

23. [15-12566](#)-A-13 RAUL/VICKY CERDA OBJECTION TO DEBTOR'S CLAIM OF  
MHM-1 EXEMPTIONS  
MICHAEL MEYER/MV 9-24-15 [[56](#)]  
SUSAN SALEHI/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).

The debtors have claimed an exemption in both a business and in tools under California Code of Civil Procedure section 703.140(b)(6). The dollar limit for a claim of exemption under this section is \$7625. The value of the claimed exemptions in such items exceeds the limit stated in § 703.140(b)(6), even though the current value of some of such property claimed exempt is \$0.00. For the reasons stated in the trustee's objection, the court will sustain the objection because, facially, Schedule C reveals exemptions that exceed the permissible statutory limit.

24. [15-11771](#)-A-13 ODIS/LAURIE BROWN MOTION TO DISMISS CASE  
MHM-1 9-14-15 [[118](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.

**Final Ruling**

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

25. [15-13071](#)-A-13 ADDISON CRAFTS MOTION TO DISMISS CASE  
MHM-1 10-5-15 [[36](#)]  
MICHAEL MEYER/MV  
DISMISSED

**Final Ruling**

The case dismissed, the motion is denied as moot.

26. [14-11379](#)-A-13 ROBERTA CUMBERLAND MOTION TO MODIFY PLAN  
PK-5 9-23-15 [[97](#)]  
ROBERTA CUMBERLAND/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

27. [15-12283](#)-A-13 RYAN MCKAY MOTION FOR COMPENSATION FOR  
PK-5 PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
10-7-15 [[89](#)]

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 \$5410.00 and reimbursement of expenses in the amount of \$61.92.

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.

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 \$5410.00 and reimbursement of expenses in the amount of \$61.92. The aggregate allowed amount equals \$5471.92. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5471.92 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.