

**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: NOVEMBER 7, 2018
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

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

1. [18-13202](#)-A-13 **IN RE: NICHOLAS ANGELICA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-25-2018 [[41](#)]

FORD MOTOR CREDIT COMPANY/MV
PATRICK KAVANAGH
AUSTIN NAGEL/ATTY. FOR MV.

No Ruling

2. [18-13202](#)-A-13 **IN RE: NICHOLAS ANGELICA**
[MHM-1](#)

MOTION TO DISMISS CASE
9-14-2018 [[37](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

Tentative Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

Petition Filed: August 3, 2018

Tax Return & 60 Day Pay Advice Deadline: September 4, 2018

Other § 521(a) & Rule 4002(b) Documents Deadline: September 11, 2018

Date of Chapter 13 trustee's § 521(a)(3) Demand: August 6, 2018

Chapter 13 trustee Michael H. Meyer ("Meyer") moves to dismiss this case. 11 U.S.C. §§ 1307(c)(1), 521(a)(3),(4). Meyer contends that he has not received all of the documents to which he is entitled, namely, "proof of all income for the six months prior to filing" and which are necessary for performance of his duties.

Nicholas J. Angelica (hereinafter "the debtor"), opposes the motion, contending that he has requested paystubs from his employer but has not received them yet. He further indicates that he has provided the trustee with a printout "cover[ing] the period of the missing paystubs." See Response, ECF No. 68, ¶ 2; Declaration of Nicholas Angelica, ECF No. 69, ¶ 4, 6.

DISMISSAL

Section 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. See *In re Robertson*, 2010 WL 5462500 (Bankr. S.C. 2010); *In re Nichols*, 2009 WL 2406172 (Bankr. E.D. N.C. 2009).

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Fed. R. Bankr. P. 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under §§ 707(b)(2)(A),(B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. P. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least 7 days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. P. 4002(b).

But the statutorily required documents do not define the outer limits of documentation debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. Section 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). As one commentator noted, "Cooperate" is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Section 521(a)(3) and (4) Documents

The trustee has requested the following additional documentation from the debtor: "proof of all income for the six months prior to filing". More than 92 days have passed since that demand and the debtor has not provided those documents. These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation in that the requested documents bear on whether the debtor is providing all of his disposable income toward the plan, if a plan objection is filed. 11 U.S.C. § 1325(b). The court finds that the debtor has had a reasonable time to cooperate and has not done so.

For each of these reasons, the case is dismissed.

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 considered the motion, opposition and ancillary documents thereto the motion,

IT IS ORDERED that the motion be granted, and the case dismissed.

3. [18-13202](#)-A-13 **IN RE: NICHOLAS ANGELICA**
[MHM-2](#)

MOTION TO DISMISS CASE
10-3-2018 [[47](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

No Ruling

4. [18-13003](#)-A-13 **IN RE: JOHN/GINA LUCERO**
[MHM-1](#)

MOTION TO DISMISS CASE
9-18-2018 [[33](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [18-13003](#)-A-13 **IN RE: JOHN/GINA LUCERO**
[PK-3](#)

CONTINUED MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL, INC.
9-10-2018 [[26](#)]

JOHN LUCERO/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

Final Ruling

The matter resolved by Order Approving Stipulation, filed October 6, 2018, ECF No. 57, the hearing is dropped as moot.

6. [18-13003](#)-A-13 **IN RE: JOHN/GINA LUCERO**
[PK-4](#)

MOTION TO CONFIRM PLAN
9-25-2018 [[37](#)]

JOHN LUCERO/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

7. [18-13308](#)-A-13 **IN RE: AIDA CORPUZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-19-2018 [[19](#)]

DISMISSED 9/19/18

Final Ruling

The case dismissed, the matter is dropped as moot.

8. [18-13212](#)-A-13 **IN RE: VERONICA TRUJILLO**
[MHM-2](#)

MOTION TO DISMISS CASE
9-17-2018 [[16](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

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 a credit counseling certificate showing that the debtor received the required credit counseling within the 180-day period preceding the petition date. With exceptions not applicable here, an individual cannot be a debtor under Title 11 unless such individual has received credit counseling as prescribed by § 109(h)(1). And credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

In this case, the debtor did not receive credit counseling within the 180-day period preceding the petition date (August 4, 2018), but rather received it four days after filing for bankruptcy (August 8, 2018). Petition, ECF No. 1; Certificate of Credit Counseling, ECF No. 12.

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.

9. [18-13212](#)-A-13 **IN RE: VERONICA TRUJILLO**
[MHM-3](#)

MOTION TO DISMISS CASE
10-3-2018 [[22](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

Final Ruling

The case will be dismissed on the trustee's motion, docket control number: MHM-2. Accordingly, the motion will be denied as moot.

CIVIL MINUTE ORDER

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

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,

IT IS ORDERED that the motion is denied as moot.

10. [18-13312](#)-A-13 **IN RE: ARISTEO ALVAREZ**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-28-2018 [[13](#)]

ACAR LEASING LTD/MV
ROBERT WILLIAMS
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

The case will be dismissed on the trustee's motion, docket control number: MHM-1. Accordingly, ACAR Leasing Ltd.'s motion for relief from stay will be denied as moot.

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 ACAR Leasing Ltd.'s motion for relief from stay has been presented to the court,

IT IS ORDERED that the motion is denied as moot.

11. [18-13312](#)-A-13 **IN RE: ARISTEO ALVAREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
10-3-2018 [[20](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

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 \$2,017.00.

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

12. [18-13213](#)-A-13 **IN RE: JAMES/CHERYL CARRINGTON**
[MHM-2](#)

MOTION TO DISMISS CASE
9-14-2018 [[17](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [18-13217](#)-A-13 **IN RE: JOHN/OLIVIA JILES**
[MHM-1](#)

MOTION TO DISMISS CASE
10-5-2018 [[19](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [18-13217](#)-A-13 **IN RE: JOHN/OLIVIA JILES**
[MHM-2](#)

MOTION TO DISMISS CASE
10-3-2018 [[13](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [18-12923](#)-A-13 **IN RE: JESUS/ROCHELLE PORTILLO**
[PK-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL
10-10-2018 [\[27\]](#)

JESUS PORTILLO/MV
PATRICK KAVANAGH

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2008 Toyota Tacoma. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$12,837.00.

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 2008 Toyota Tacoma has a value of \$12,837.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$12,837.00 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.

16. [18-12923](#)-A-13 **IN RE: JESUS/ROCHELLE PORTILLO**
[PK-2](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL
10-10-2018 [[33](#)]

JESUS PORTILLO/MV
PATRICK KAVANAGH

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in

such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2007 Toyota Camry. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$3,000.00.

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 2007 Toyota Camry has a value of \$3,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$3,000.00 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.

17. [16-12428](#)-A-13 **IN RE: SONIA GONZALEZ**
[RSW-3](#)

MOTION TO MODIFY PLAN
9-12-2018 [[43](#)]

SONIA GONZALEZ/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

18. [14-11929](#)-A-13 **IN RE: MARIA FRUTOS**
[PLG-2](#)

MOTION TO MODIFY PLAN
9-12-2018 [[37](#)]

MARIA FRUTOS/MV
STEVEN ALPERT
RESPONSIVE PLEADING

No Ruling

19. [18-11829](#)-A-13 **IN RE: FERNANDO LEYVA**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
8-16-2018 [[36](#)]

MICHAEL MEYER/MV
RICHARD STURDEVANT
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [18-13030](#)-A-13 **IN RE: JESUS PORTILLO-VAQUERO AND ELSA**
GONZALEZ-PORTILLO
[MHM-1](#)

MOTION TO DISMISS CASE
9-18-2018 [[29](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

No Ruling

21. [16-11139](#)-A-13 **IN RE: RONALD/LINDA FERNAN**
[ASW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-14-2018 [[48](#)]

KERN SCHOOLS FEDERAL CREDIT
UNION/MV
WILLIAM OLCOTT
CAREN CASTLE/ATTY. FOR MV.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

22. [18-13343](#)-A-13 **IN RE: EUGENE/ANDREA WILLIAMS**
[MHM-1](#)

MOTION TO DISMISS CASE
10-3-2018 [[12](#)]

MICHAEL MEYER/MV
LEONARD WELSH
RESPONSIVE PLEADING

Tentative Ruling

The motion will be continued to December 5, 2018, at 9:00 a.m. at the Bakersfield Federal Courthouse, 510 19th Street, Second Floor, Bakersfield, California, to coincide with the debtors' motion to modify Chapter 13 plan.

23. [18-13245](#)-A-13 **IN RE: RODNEY/VICKI SLATER**
[MHM-1](#)

MOTION TO DISMISS CASE
9-20-2018 [[49](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [18-13245](#)-A-13 **IN RE: RODNEY/VICKI SLATER**
[PK-2](#)

MOTION TO CONFIRM PLAN
9-12-2018 [[40](#)]

RODNEY SLATER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

Tentative Ruling

The debtors' motion to confirm plan will be continued to December 5, 2018, at 9:00 a.m. at the Bakersfield Federal Courthouse, 510 19th Street, Second Floor, Bakersfield, California, to allow the Chapter 13 trustee to file an objection.

25. [18-12548](#)-A-13 **IN RE: RAFAEL/MARTHA GUTIERREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
9-11-2018 [[21](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [13-14768](#)-A-13 **IN RE: GREGORY/SUSAN ERNST**
[MHM-1](#)

MOTION TO DISMISS CASE
9-6-2018 [[69](#)]

MICHAEL MEYER/MV
STEVEN ALPERT
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [18-13672](#)-A-13 **IN RE: ARTURO/EMILIA GONZALEZ**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-24-2018 [[26](#)]

BANK OF THE WEST/MV
PATRICK KAVANAGH
MARY TANG/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Hideout Travel Trailer

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).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's personal property described above. The debtor has defaulted on the loan as two postpetition payments are past due. The total postpetition delinquency is approximately \$489.00.

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

CIVIL MINUTE ORDER

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

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

Bank of the West's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2016 Hideout Travel Trailer, as to all parties

in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

28. [18-13084](#)-A-13 **IN RE: JENNIFER BROWNEN**
[MHM-1](#)

MOTION TO DISMISS CASE
9-17-2018 [[23](#)]

MICHAEL MEYER/MV
MICHAEL AVANESIAN

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

Petition Filed: July 30, 2018

Tax Return & 60 Day Pay Advice Deadline: September 4, 2018

Other § 521(a) Rule 4002(b) Documents Deadline: September 11, 2018

Date of Chapter 13 trustee's § 521(a)(3) Demand: July 31, 2018

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 trustee Michael H. Meyer ("Meyer") moves to dismiss this case. 11 U.S.C. §§ 1307(c)(1), 521(a)(3),(4). Meyer contends that he has not received all of the documents to which he is entitled and which are necessary for performance of his duties. Jennifer Brownen (hereinafter "the debtor"), does not oppose the motion.

DISMISSAL

Section 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. *See In re Robertson*, 2010 WL 5462500 (Bankr. S.C. 2010); *In re Nichols*, 2009 WL 2406172 (Bankr. E.D. N.C. 2009).

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Fed. R. Bankr. P. 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under §§ 707(b)(2)(A),(B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least 7 days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. Section 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). As one commentator noted, "Cooperate" is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Section 521(a),(e) & Rule 4002(b) Documents

The debtor has not provided the trustee the 2017 State and Federal tax returns at least 7 days prior to the meeting of creditors.

Section 521(a)(3) Documents

The trustee has requested the following additional documentation from the debtor: evidence of all income for the six months prior to filing, and Class 1 Mortgage Checklist with payment coupon or last statement. More than 98 days have passed since that demand and the debtor has not provided those documents. These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation. The debtor has included her mortgage in Class 1. Plan, Section 3.07., ECF No. 20. The debtor has not provided the documents, which would allow the trustee to complete necessary tasks (i.e. cure arrearages and make ongoing mortgage payments). 11 U.S.C. § 1322 (b)(3), (8). The court finds that the debtor has had a reasonable time to cooperate and has not done so.

Section 109(1)(1) & 521(b) Credit Counseling Certificate

The debtor has failed to provide a credit counseling certificate showing that the debtor received the required credit counseling within the 180-day period preceding the petition date. With exceptions not applicable here, an individual cannot be a debtor under Title 11 unless such individual has received credit counseling as prescribed by § 109(h)(1). And credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

For each of these reasons, the case is dismissed.

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 motion, opposition and ancillary documents thereto the motion,

IT IS ORDERED that the motion be granted, and the case dismissed.

29. [18-13084](#)-A-13 **IN RE: JENNIFER BROWNEN**
[MHM-2](#)

MOTION TO DISMISS CASE
10-2-2018 [\[27\]](#)

MICHAEL MEYER/MV
MICHAEL AVANESIAN

Final Ruling

The court will dismiss this case on the trustee's motion, docket control number: MHM-1. Accordingly, the motion will be denied as moot.

CIVIL MINUTE ORDER

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

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,

IT IS ORDERED that the motion is denied as moot.

30. [18-11889](#)-A-13 **IN RE: MATTHEW/JENNIFER FACIO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-13-2018 [[36](#)]

SUSAN SALEHI
9/17/18 FINAL INSTALLMENT - PAID IN FULL

Final Ruling

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

31. [18-12790](#)-A-13 **IN RE: ROBINSON/MARIA POLANCO**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
8-16-2018 [[15](#)]

MICHAEL MEYER/MV
RICHARD STURDEVANT
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.