

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY: WEDNESDAY**  
**DATE: DECEMBER 9, 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. [15-13603](#)-A-13 JUAN A. LOPEZ  
PBB-1  
JUAN A. LOPEZ/MV  
PETER BUNTING/Atty. for dbt.

MOTION TO AVOID LIEN OF CACH,  
LLC  
10-30-15 [[16](#)]

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

2. [15-13604](#)-A-13 MARIO/DIANA PEREZ  
JDW-2  
U.S. BANK NATIONAL  
ASSOCIATION/MV  
PETER BUNTING/Atty. for dbt.  
JOSHUA WAYSER/Atty. for mv.

MOTION FOR ORDER APPROVING  
RECEIVER'S FINAL ACCOUNT AND  
REPORT  
11-25-15 [[106](#)]

**No tentative ruling.**

3. [15-13604](#)-A-13 MARIO/DIANA PEREZ  
JHW-1  
DAIMLER TRUST/MV  
PETER BUNTING/Atty. for dbt.  
JENNIFER WANG/Atty. for mv.  
NON-OPPOSITION

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-21-15 [[57](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2013 Mercedes Benz C250W

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).

### **STAY RELIEF**

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). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make monthly payments to the moving party pursuant to a lease agreement by which the debtor leases the vehicle described above. The debtor has defaulted under such lease agreement with the moving party, and 1 postpetition payment is past due. The moving party's interest in the vehicle is not being adequately protected due to the debtor's postpetition default. Furthermore, the debtors have surrendered the vehicle and filed a nonopposition to the relief sought. Therefore, cause exists to grant 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 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.

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 2013 Mercedes Benz C250W, 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.

4. [15-13604](#)-A-13 MARIO/DIANA PEREZ  
PBB-2  
MARIO PEREZ/MV  
PETER BUNTING/Atty. for dbt.  
RESPONSIVE PLEADING

5. 15-13604-A-13 MARIO/DIANA PEREZ  
PBB-3  
MARIO PEREZ/MV  
PETER BUNTING/Atty. for dbt.  
RESPONSIVE PLEADING

6. 13-17106-A-13 DAVID/ROSE MURRAY  
BCS-3

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, Fishman, Larsen & Callister has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$7939 and reimbursement of expenses in the amount of \$539.54.

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.

Fishman, Larsen & Callister'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 \$7939 and reimbursement of expenses in the amount of \$539.54. The aggregate allowed amount equals \$8478.54. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$8478.54 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.

7. [13-17712](#)-A-13 RUBEN OLVERA AND GLORIA  
MHM-1 CHAVEZ  
THOMAS GILLIS/Atty. for dbt.
- OBJECTION TO CONFIRMATION OF  
PLAN BY MICHAEL H. MEYER  
11-16-15 [[172](#)]

**No tentative ruling.**

8. [15-13719](#)-A-13 BUFORD LAND  
CJO-1  
BGK INVESTMENTS, INC./MV  
PATRICK KAVANAGH/Atty. for dbt.  
CHRISTINA O/Atty. for mv.
- MOTION TO CONFIRM TERMINATION  
OR ABSENCE OF STAY  
11-24-15 [[26](#)]

**Final Ruling**

**Motion:** For Order Confirming Termination of the Stay

**Disposition:** Denied as moot

**Order:** Civil minute order

The moving party seeks an order confirming that the stay has terminated. An order requested under § 362(j) is only to be issued under subsection (c) of § 362. But whether prior cases of the debtor that were dismissed had an effect on the stay under § 362(c) in the present case is a question that has become moot. The dismissal of this case has unambiguously terminated the automatic stay, § 362(c)(2)(B), so the court is unable to grant effective relief. The motion will be denied as moot.

9. [15-12329](#)-A-13 ANITA BARLOW  
BDB-2  
ANITA BARLOW/MV  
BENNY BARCO/Atty. for dbt.
- MOTION TO VALUE COLLATERAL OF  
EDUCATIONAL EMPLOYEES CREDIT  
UNION  
10-26-15 [[51](#)]

**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 2011 Nissan Rogue. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$11,391.

## **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 2011 Nissan Rogue has a value of \$11,391. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$11,391 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.

10. [15-13934](#)-A-13 KLAS/BARBARA DENHEYER MOTION FOR RELIEF FROM  
HAR-1 AUTOMATIC STAY  
DONALD R. WATSON TRUST/MV 11-24-15 [[20](#)]  
LAUREN RODE/Atty. for dbt.  
HILTON RYDER/Atty. for mv.

**No tentative ruling.**

11. [15-13935](#)-A-13 RANDALL/SHARI WARKENTIN ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-12-15 [[21](#)]  
JERRY LOWE/Atty. for dbt.  
\$80 INSTALLMENT FEE PAID

**Final Ruling**

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

12. [14-15736](#)-A-13 OMAR MARTINEZ AND JUDIT CONTINUED MOTION TO DISMISS  
MHM-2 LOPEZ CASE  
MICHAEL MEYER/MV 10-7-15 [[60](#)]  
GLEN GATES/Atty. for dbt.

**Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** LBR 9014-1(f) (1) / Continued hearing date

**Disposition:** Granted

**Order:** Civil minute order

For the reasons stated in the motion and supplemental declaration filed at docket no. 69, together with the court's civil minute order dated November 21, 2015, cause exists under § 1307(c)(1) and (6) to dismiss the case. After the initial hearing in this matter, the court issued a civil minute order requiring the debtor to be fully current on all plan payments, both the delinquency alleged in the trustee's motion and the November 2015 payment. The trustee was to file a status report or withdraw the motion if all required payments were made. The trustee's supplemental declaration filed December 2, 2015, indicates that the debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1765.60 through November 2015. The court will therefore dismiss the case.

**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 \$1765.60. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

13. [10-60037](#)-A-13 CURT/JACLYN FLEMING MOTION TO DISMISS CASE  
MHM-1 10-6-15 [[65](#)]  
MICHAEL MEYER/MV  
PETER FEAR/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

14. [10-61741](#)-A-13 RAYNALDO/CYNTHIA OVALLE MOTION TO DISMISS CASE  
MHM-2 10-23-15 [[38](#)]  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

15. [12-14743](#)-A-13 DAVID LARSON AND TINA CONTINUED MOTION TO DISMISS  
MHM-2 MEDEIROS-LARSON CASE  
MICHAEL MEYER/MV 10-6-15 [[61](#)]  
THOMAS ARMSTRONG/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
RESPONSIVE PLEADING

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

16. [12-14743](#)-A-13 DAVID LARSON AND TINA MOTION TO EMPLOY JOHN FOWLER AS  
THA-4 MEDEIROS-LARSON SPECIAL COUNSEL  
DAVID LARSON/MV 11-3-15 [[66](#)]  
THOMAS ARMSTRONG/Atty. for dbt.

**Final Ruling**

**Motion:** For Retroactive Employment of Special Counsel

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

**Disposition:** Granted

**Order:** Prepared by the movant

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

The court has reviewed the motion. Based on the factual representations therein, the court will retroactively approve the employment of Fowler Vogt and John Fowler as special counsel pursuant to § 327(e). Employment is approved so that special counsel may prosecute postpetition employment/labor law claims against debtor's former employer. The employment is approved retroactively to June 30, 2015.

17. [12-14743](#)-A-13 DAVID LARSON AND TINA MOTION TO MODIFY PLAN  
THA-5 MEDEIROS-LARSON 11-3-15 [[71](#)]  
DAVID LARSON/MV  
THOMAS ARMSTRONG/Atty. for dbt.  
RESPONSIVE PLEADING (OPPOSITION WITHDRAWN)

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared and approved 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.

18. [11-16344](#)-A-13 ROSEMARIE LINDBECK MOTION TO MODIFY PLAN  
DRJ-1 10-29-15 [[55](#)]  
ROSEMARIE LINDBECK/MV  
M. ENMARK/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 and approved 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.

19. [12-17945](#)-A-13 LEROY/KRISTIE GREEN OBJECTION TO NOTICE OF MORTGAGE  
BCS-8 PAYMENT CHANGE  
LEROY GREEN/MV 11-6-15 [[135](#)]  
BENJAMIN SHEIN/Atty. for dbt.

**Tentative Ruling**

**Objection:** Objection to Notice of Mortgage Payment Change

**Notice:** LBR 9014-1(f)(1) / LBR 3007-1(b)(1); written opposition required

**Disposition:** Overruled as moot

**Order:** Civil minute order

Federal National Mortgage Association (FNMA) filed a notice of mortgage payment change on 10/9/2015. The debtors filed the present objection in response to FNMA's notice. After the debtors' objection was filed, FNMA withdrew its notice. The withdrawal is a document filed on November 24, 2015 signed by Lisa Singer on behalf of FNMA c/o Seterus. Accordingly, the objection will be overruled as moot.

20. [12-12146](#)-A-13 MANUEL/EDUVIJES INONG MOTION TO MODIFY PLAN  
SL-2 10-5-15 [[44](#)]  
MANUEL INONG/MV  
STEPHEN LABIAK/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

21. [12-12146](#)-A-13 MANUEL/EDUVIJES INONG MOTION TO MODIFY PLAN  
SL-3 10-19-15 [[58](#)]  
MANUEL INONG/MV  
STEPHEN LABIAK/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

22. [12-12146](#)-A-13 MANUEL/EDUVIJES INONG MOTION TO MODIFY PLAN  
SL-4 10-20-15 [[64](#)]  
MANUEL INONG/MV  
STEPHEN LABIAK/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

23. [12-12146](#)-A-13 MANUEL/EDUVIJES INONG MOTION TO MODIFY PLAN  
SL-5 10-20-15 [[74](#)]  
MANUEL INONG/MV  
STEPHEN LABIAK/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

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

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

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

24. [15-13348](#)-A-13 CYRUSS/KRISTEN LAMARSNA MOTION TO CONFIRM PLAN  
SL-1 10-15-15 [[20](#)]  
CYRUSS LAMARSNA/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

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

### **CONFIRMATION**

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

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

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

schedule a further hearing after additional briefing on any disputed legal issues.

## **75 DAY ORDER**

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).

25. [10-19450](#)-A-13 DAVID/VICKIE BUMP  
NLG-1 MOTION FOR RELIEF FROM  
SETERUS, INC./MV AUTOMATIC STAY  
ADRIAN WILLIAMS/Atty. for dbt. 11-5-15 [[128](#)]  
NICHOLE GLOWIN/Atty. for mv.  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

26. [15-13653](#)-A-13 BRADLEY JAURIQUE  
MHM-2 MOTION TO DISMISS CASE  
MICHAEL MEYER/MV 11-2-15 [[28](#)]  
JERRY LOWE/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

27. [10-18058](#)-A-13 TED/BIANCA CRAVEN  
MHM-1 OBJECTION TO NOTICE OF INTENT  
MICHAEL MEYER/MV TO ENTER DISCHARGE BY MICHAEL  
H. MEYER  
10-21-15 [[54](#)]  
GARY HUSS/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

28. [14-11059](#)-A-13 JORGE VELAZQUEZ-JARACUARO MOTION TO MODIFY PLAN  
ALG-4 AND ADRIANA OROPEZA 9-17-15 [[101](#)]  
JORGE VELAZQUEZ-JARACUARO/MV  
JANINE ESQUIVEL/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 and approved 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.

29. [15-13461](#)-A-13 RAMIRO OCHOA MOTION TO DISMISS CASE  
MHM-1 10-27-15 [[21](#)]  
MICHAEL MEYER/MV  
NELLIE AGUILAR/Atty. for dbt.

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

30. [15-13461](#)-A-13 RAMIRO OCHOA OBJECTION TO CONFIRMATION OF  
MHM-2 PLAN BY TRUSTEE MICHAEL H.  
MEYER  
11-16-15 [[28](#)]  
NELLIE AGUILAR/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.

**No tentative ruling.**

31. [15-12763](#)-A-13 FRANK MOOSIOS  
DRJ-2  
MOOSIOS RIVER RANCH/MV  
TRUDI MANFREDO/Atty. for dbt.  
DAVID JENKINS/Atty. for mv.  
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-10-15 [[69](#)]

### **Tentative Ruling**

**Motion:** Stay Relief [Both Automatic Stay and Co-Debtor Stay]

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** Prosecution of civil action against debtor, Kimberly Moosios, and Arland Hayes, pending in Madera County Superior Court, for unlawful detainer with respect to real property located at 7221 Road 35, Madera, CA

### **CO-DEBTOR DEFAULTS ENTERED**

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 by the co-debtors. The default of the co-debtor respondents is entered. As to them, 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).

### **STAY RELIEF AS TO DEBTOR**

The debtor has filed a conditional non-opposition to the relief requested. The condition to the debtor's nonopposition is that prepetition damages not be subject to collection except through a claim filed in the case. The relief sought by movant is consistent with this condition. Although movant has sought relief to permit it to liquidate and determine the amount of damages to which movant may be entitled from debtor, movant does not seek relief from stay to enforce any monetary judgment obtained—other than by filing a proof of claim in this case. Accordingly, because the debtor does not oppose the relief sought, given that the condition will be met, the court will grant relief from stay for cause.

### **STAY RELIEF AS TO CO-DEBTORS**

In a separate matter, the movant's reply to the debtor's opposition to the movant's dismissal motion indicates that a modified plan now properly characterizes the movant's judgment claim as a secured claim. One could reasonably question whether the plan can be read "to pay" movant's claim when payment is conditioned on a sale of real property that has not yet occurred and when payments are negatively amortized. See 11 U.S.C. § 1301(c)(2). Because of the lack of opposition filed by the co-debtors, and because no one has disputed that "the plan filed by the debtor proposes not to pay" the movant's claim, § 1301(c)(2), relief from the co-debtor stay is warranted.



The motion for relief from stay and from the co-debtor stay of § 1301 will be granted. The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. No other relief will be awarded.

32. [15-12763](#)-A-13 FRANK MOOSIOS  
DRJ-3  
LOUIS MOOSIOS/MV  
TRUDI MANFREDO/Atty. for dbt.  
DAVID JENKINS/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
11-10-15 [[72](#)]

### **Tentative Ruling**

**Motion:** Dismiss Chapter 13 Case

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material issues: (i) whether the debtor has regular income that qualifies him for relief under chapter 13 of Title 11, see 11 U.S.C. § 109(e); (ii) whether the case was filed in bad faith; and (iii) whether the plan was proposed in bad faith.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

33. [15-12566](#)-A-13 RAUL/VICKY CERDA  
SJS-3  
RAUL CERDA/MV  
SUSAN SALEHI/Atty. for dbt.

MOTION TO CONFIRM PLAN  
10-23-15 [[68](#)]

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared and approved 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).

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.

34. [15-12767](#)-A-13 CRYSTAL REED AND JASSEN  
MHM-1 CHUTE  
MICHAEL MEYER/MV  
BENNY BARCO/Atty. for dbt.

CONTINUED MOTION TO DISMISS  
CASE  
9-30-15 [[23](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

35. [15-13372](#)-A-13 MARCELO AGUILAR  
MHM-1  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.

MOTION TO DISMISS CASE  
11-16-15 [[19](#)]

**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.

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.

36. [15-13975](#)-A-13 NIEVES HOLGUIN AND ALICIA ORDER TO SHOW CAUSE - FAILURE  
ESPINOZA TO PAY FEES  
11-13-15 [[18](#)]  
THOMAS GILLIS/Atty. for dbt.  
\$79 INSTALLMENT FEE PAID

#### **Final Ruling**

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

37. [10-61678](#)-A-13 LETICIA ALVAREZ MOTION TO DISMISS CASE  
MHM-2 10-23-15 [[62](#)]  
MICHAEL MEYER/MV  
JANINE ESQUIVEL/Atty. for dbt.

**No tentative ruling.**

38. [15-13478](#)-A-13 MICHAEL/LEEANN DAVIS OBJECTION TO DEBTOR'S CLAIM OF  
MHM-1 EXEMPTIONS  
MICHAEL MEYER/MV 11-9-15 [[19](#)]  
SUSAN HEMB/Atty. for dbt.

## Final Ruling

After the trustee filed his objection to the debtors' claim of exemptions under the Michigan exemption laws, the debtors amended their Schedule C. The amended schedule affects at least some of the items claimed exempt, if not all of them, to which the trustee had objected. The objection will be overruled as moot.

39. [15-13381](#)-A-13 JOSEPH DIAZ MOTION TO CONFIRM PLAN  
MR-1 10-28-15 [[34](#)]  
JOSEPH DIAZ/MV  
MATIN RAJABOV/Atty. for dbt.  
RESPONSIVE PLEADING

## Final Ruling

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that a creditor or party in interest (Del Toro Loan Servicing) has not received notice.

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.

40. [15-11987](#)-A-13 JESUS/DIANEY MOSQUEDA  
TOG-4  
JESUS MOSQUEDA/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
10-19-15 [[40](#)]

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

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

### **CONFIRMATION**

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

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

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

### **75 DAY ORDER**

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).

41. [15-13096](#)-A-13 CRYSTAL MONROY CERVANTES      OBJECTION TO DEBTOR'S CLAIM OF  
MHM-1      EXEMPTIONS  
MICHAEL MEYER/MV      11-9-15 [[40](#)]  
PETER FEAR/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The objection withdrawn, the matter is dropped as moot.

42. [10-63398](#)-A-13 JOSE/JOSEPHINE REYES      MOTION FOR OMNIBUS RELIEF  
GH-2      10-26-15 [[34](#)]  
JOSE REYES/MV  
GARY HUSS/Atty. for dbt.

**Final Ruling**

**Motion:** Omnibus Relief Pursuant to LBR 1016-1(b)

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

**Disposition:** Granted

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

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

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

The court finds that further administration is possible and in the best interests of the debtor and creditors in this case as no creditor or party in interest has presented grounds for dismissing the case or denying the waiver requested. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1001-1(f), the court will grant the motion and waive the requirement that (1) the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1 and (2) the deceased debtor complete

the postpetition education requirement.

The order shall state only the following: "IT IS ORDERED that the motion is granted. The debtor, Jose Reyes, shall be substituted as the representative for or successor to the deceased joint debtor. The postpetition education requirement shall be waived as a condition to entry of discharge as to Josephine Reyes. The court waives the requirement that Josephine Reyes complete and file certifications concerning compliance with § 1328. And the court finds the continued administration of the case is possible and in the best interests of the parties."

43. [15-13381](#)-A-13 JOSEPH DIAZ  
MR-2  
JOSEPH DIAZ/MV  
MATIN RAJABOV/Atty. for dbt.

MOTION TO CONFIRM PLAN  
12-8-15 [[51](#)]

### **Final Ruling**

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The moving party did not provide a sufficient period of notice of the hearing on the motion or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 2002(b) requires not less than 28 days' notice of the time fixed for filing objections and the hearing to consider confirmation of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 42 days' notice of the motion. LBR 3015-1(d). Creditors and parties in interest received less than 28 days' notice of the time fixed for filing objections, and the motion and notice of hearing were filed and served less than 42 days before the hearing.