

**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:** THURSDAY  
**DATE:** DECEMBER 15, 2016  
**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.

**ORAL ARGUMENT**

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

**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. [16-12106](#)-A-13 EFRAIN CAMPOS AND  
JES-2 CANDELARIA NAVA  
JAMES SALVEN/MV

SCOTT LYONS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

CONTINUED MOTION FOR  
COMPENSATION FOR JAMES E.  
SALVEN, CHAPTER 7 TRUSTEE(S)  
10-7-16 [[34](#)]

**No tentative ruling.**

2. [16-12106](#)-A-13 EFRAIN CAMPOS AND  
MHM-1 CANDELARIA NAVA

SCOTT LYONS/Atty. for dbt.

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
11-21-16 [[61](#)]

**No tentative ruling.**

3. [16-13015](#)-A-13 BARBARA LOPEZ POSADA

SCOTT LYONS/Atty. for dbt.

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-21-16 [[72](#)]

**Final Ruling**

The matter is continued to December 21, 2016, at 9:00 a.m., by which time all installment fees due the Clerk must have been paid, pursuant to Civil Minute Order, ECF #66.

4. [16-14121](#)-A-13 MARIA GARCIA

CHARLES STONER/Atty. for dbt.

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-29-16 [[13](#)]

**Final Ruling**

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

5. [13-14824](#)-A-13 ALBERT/DEE ANNA KNAUER  
MHM-1  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE  
11-7-16 [[48](#)]

**No tentative ruling.**

6. [16-12326](#)-A-13 JOSE MARTINEZ AND MARIA MOTION TO DISMISS CASE  
MHM-3 SARAVIA 10-14-16 [[54](#)]  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

7. [13-14827](#)-A-13 PHILIP/JUANELDA YOSHIKAWA MOTION FOR COMPENSATION FOR  
NES-3 NEIL E. SCHWARTZ, DEBTORS  
ATTORNEY(S)  
11-11-16 [[32](#)]  
NEIL SCHWARTZ/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

8. [16-12828](#)-A-13 MARVITA SEAWELL MOTION TO DISMISS CASE  
MHM-2 10-14-16 [[27](#)]  
MICHAEL MEYER/MV  
PATRICK GREENWELL/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).

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2240.

### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

9. [16-12933](#)-A-13 JESUS GARCIA  
MHM-1  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE  
11-2-16 [[18](#)]

### **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 tax returns that must be filed by the § 1308(a) deadline include all tax returns for all taxable periods ending during the 4-year period ending on the petition date. Absent an extension by the trustee or the court under § 1308(b), the debtor is required to file such returns not later than 1 day before the date of the first meeting of creditors. 11 U.S.C. § 1308(a).

In this case, all taxable periods ending during the 4-year period include 2012, 2013, 2014, and 2015. The debtor has failed to comply with the requirements of § 1308(a). As of the continued meeting of creditors on October 25, 2016, debtor had not yet filed his federal and state tax returns for tax years 2012, 2013, and 2014.

### **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 failure to timely file tax returns under § 1308(a), which is a basis for dismissal under § 1307(e). The court hereby dismisses this case.

10. [16-13035](#)-A-13 SHAIDA ALI  
MHM-2  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
11-10-16 [[30](#)]

### **Final Ruling**

**Objection:** Objection to Claim of Exemptions for Failure to File Spousal Waiver

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

### **OBJECTION TO EXEMPTIONS**

The debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objects to the debtor's claim of exemptions because the debtor has not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure, excluding the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

The debtor is married but has not filed a joint petition with debtor's spouse. The debtor may not claim exemptions under section 703.140(b) unless both spouses have filed the required spousal waiver described in section 703.140(a)(2).

Both spouses have signed such waiver. Spousal Waiver, ECF No. 35. The court will overrule the objection 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 chapter 13 trustee's objection to the debtor's claim of exemptions has been presented to the court.

IT IS ORDERED that the trustee's objection is overruled as moot given the filing of a spousal waiver on December 13, 2016.

11. [16-13635](#)-A-13 STEVEN/MARGARITA STROUD      OBJECTION TO CONFIRMATION OF  
MHM-1      PLAN BY TRUSTEE MICHAEL H.  
MEYER  
11-21-16 [[20](#)]

MARK ZIMMERMAN/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied as moot

**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Modifying the plan renders moot any pending confirmation motion for a previously filed plan.

12. [16-12840](#)-A-13 ALVINO GARCIA      MOTION TO DISMISS CASE  
MHM-1      10-14-16 [[20](#)]  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/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).

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2450.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

13. [16-12840](#)-A-13 ALVINO GARCIA MOTION TO CONFIRM PLAN  
TCS-2 11-2-16 [[27](#)]  
ALVINO GARCIA/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

### **Final Ruling**

The chapter 13 trustee's motion to dismiss this case has been granted, and the court's issuance of an order on such motion is pending. The motion to confirm is denied as moot.

14. [16-11842](#)-A-13 FRANK/STEPHANIE HERNANDEZ MOTION TO MODIFY PLAN  
SL-2 10-26-16 [[40](#)]  
FRANK HERNANDEZ/MV  
SCOTT LYONS/Atty. for dbt.

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by 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)(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.

15. [16-13344](#)-A-13 JILL HOFFMAN

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-18-16 [[36](#)]

TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

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

16. [16-13148](#)-A-13 EUSTORGIO REYES

MOTION TO DISMISS CASE  
10-14-16 [[22](#)]

MHM-1

MICHAEL MEYER/MV

LAUREN RODE/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).

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2159.02.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.



17. [16-13250](#)-A-13 SONYA SIDHU  
MHM-2  
  
TIMOTHY SPRINGER/Atty. for dbt.

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
11-21-16 [[29](#)]

**No tentative ruling.**

18. [16-13054](#)-A-13 ABEL/ANA CARRANZA  
MHM-1  
  
MARK ZIMMERMAN/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
10-17-16 [[21](#)]

**No tentative ruling.**

19. [11-60757](#)-A-13 BARRY GORMAN  
MHM-1  
MICHAEL MEYER/MV  
GARY HUSS/Atty. for dbt.  
SARAH VELASCO/Atty. for mv.

CONTINUED MOTION TO DISMISS  
CASE  
10-3-16 [[67](#)]

**Final Ruling**

The motion will be denied as moot. The basis for the motion was that two lien avoidance motions were filed in this reopened case. If granted, these two lien avoidance motions would be required to be paid in full as unsecured claims pursuant to the terms of the confirmed plan, absent a claim objection. Both lien avoidance motions were withdrawn.

20. [11-60757](#)-A-13 BARRY GORMAN  
MHM-2  
MICHAEL MEYER/MV  
GARY HUSS/Atty. for dbt.  
SARAH VELASCO/Atty. for mv.

CONTINUED MOTION TO VACATE  
DISCHARGE OF DEBTOR(S)  
10-3-16 [[74](#)]

**Final Ruling**

The motion will be denied as moot. The basis for the motion was that two lien avoidance motions were filed in this reopened case. If granted, these two lien avoidance motions would be required to be paid in full as unsecured claims pursuant to the terms of the confirmed plan, absent a claim objection. Both lien avoidance motions were withdrawn.

21. [11-60757](#)-A-13 BARRY GORMAN  
MHM-3  
MICHAEL MEYER/MV

OBJECTION TO CLAIM OF SECURITY  
CREDIT SERVICES, LLC, CLAIM  
NUMBER 5  
10-20-16 [[85](#)]

GARY HUSS/Atty. for dbt.  
SARAH VELASCO/Atty. for mv.

### **Final Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(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).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

In a Chapter 13 case, a creditor must file a timely proof of claim in order to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. *In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each Chapter 13 creditor to file a timely proof of claim. A claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

Here, the claimant has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

22. [16-13480](#)-A-13 DANIEL CISNEROS TORRES  
JM-1 AND ANGELINA RODRIGUEZ  
LENDMARK FINANCIAL SERVICES,  
LLC/MV  
SCOTT LYONS/Atty. for dbt.  
JAMES MACLEOD/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY LENDMARK FINANCIAL  
SERVICES, LLC  
11-23-16 [[24](#)]

**No tentative ruling.**

23. [16-13480](#)-A-13 DANIEL CISNEROS TORRES CONTINUED OBJECTION TO  
MHM-1 AND ANGELINA RODRIGUEZ CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
10-27-16 [[18](#)]

SCOTT LYONS/Atty. for dbt.  
WITHDRAWN

FINAL RULING

**The objection withdrawn, the matter is dropped as moot.**

24. [12-17783](#)-A-13 EDWARD/THERESA AGUALLO MOTION TO MODIFY PLAN  
TCS-2 11-4-16 [[77](#)]  
EDWARD AGUALLO/MV  
TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by 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)(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.

25. [16-14188](#)-A-13 ANTONIO/MARIA ROMERO MOTION TO EXTEND AUTOMATIC STAY  
SL-1 11-30-16 [[9](#)]  
ANTONIO ROMERO/MV  
SCOTT LYONS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted except as to any creditor without proper notice of this motion

**Order:** Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

26. [14-15493](#)-A-13 DANIEL/LYDIA WILLIAMS MOTION TO MODIFY PLAN  
FW-2 11-3-16 [[71](#)]  
DANIEL WILLIAMS/MV  
PETER FEAR/Atty. for dbt.

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by 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)(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.

27. [14-15493](#)-A-13 DANIEL/LYDIA WILLIAMS MOTION FOR COMPENSATION BY THE  
FW-3 LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL,  
DEBTORS ATTORNEY(S)  
11-16-16 [[79](#)]
- PETER FEAR/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, Fear Waddell, P.C., has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$6952.50 and reimbursement of expenses in the amount of \$507.86.

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.

Fear Waddell, P.C.'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 \$6952.50 and reimbursement of expenses in the amount of \$507.86. The aggregate allowed amount equals \$7460.36. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$7460.36 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.

28. [15-12498](#)-A-13 JULIE ROSALES  
MHM-1  
MICHAEL MEYER/MV  
GEORGE LOGAN/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CASE  
9-6-16 [[23](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** Continued hearing date; written opposition filed

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$2230.98 as of August 31, 2016.

The court continued the hearing on this motion to this date. The civil minutes stated that the continuance was to allow debtor time to file a motion to modify. Civ. Mins. Hr'g on Mot. Dismiss, Oct. 14, 2016, ECF No. 46. The motion to modify was to be heard not later than December 15, 2016. *Id.*

A motion to modify was filed and set a hearing for October 27, 2016. The motion was withdrawn. No explanation has been provided in response to this motion to dismiss.

#### **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, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

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

29. [16-10698](#)-A-13 MATTHEW/DEBORAH EVANS  
TCS-2  
MATTHEW EVANS/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
10-21-16 [[50](#)]

**No tentative ruling.**