

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

THURSDAY

FEBRUARY 19, 2015

PRE-HEARING DISPOSITIONS

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.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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.

9:00 a.m.

1. [14-16004](#)-A-13 JUAN/ELIZABETH LECLERE MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
AMERICREDIT FINANCIAL 1-20-15 [[15](#)]
SERVICES, INC./MV
TIMOTHY SPRINGER/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2014 Chevrolet Malibu

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 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make 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 as 1 postpetition lease payment, and 3 prepetition lease payments, are past due.

The moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a)(1)(B) (requiring personal property lease payments to commence not later than 30 days after the petition).

In addition, the movant asserts that the debtors surrendered the vehicle on December 17, 2014 (The petition was filed December 20, 2014). The debtor has not opposed the movant's stay relief request. 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.

2. [11-60105](#)-A-13 PORFIRIO/SANDRA GARZA MOTION TO MODIFY PLAN
GMA-2 1-15-15 [[38](#)]
PORFIRIO GARZA/MV
GEOFFREY ADALIAN/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

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.

5. [10-11810](#)-A-13 RICHARD/TAMARA JACKSON OBJECTION TO CLAIM OF INTERNAL
DRJ-5 REVENUE SERVICE, CLAIM NUMBER
RICHARD JACKSON/MV 21
1-5-15 [[58](#)]
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling

6. [14-15811](#)-A-13 NADER SHOKRY MOTION TO AVOID LIEN OF
PLG-2 COLLECTIBLES MANAGEMENT
NADER SHOKRY/MV
RESOURCES
1-19-15 [[33](#)]
RABIN POURNAZARIAN/Atty. for dbt.

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.

7. [10-12512](#)-A-13 SUSANNA KHALATYAN
MHM-1
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
1-5-15 [[44](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

8. [11-63012](#)-A-13 LAWRENCE/MARY STRAMBI
JDW-7
LAWRENCE STRAMBI/MV
JOEL WINTER/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

CONTINUED MOTION TO MODIFY PLAN
12-17-14 [[96](#)]

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

9. [10-13225](#)-A-13 CHRISTOPHER/BONNIE DAVIS MOTION TO DISMISS CASE FOR
MHM-2 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 1-5-15 [[72](#)]
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [14-14125](#)-A-13 MARTIN CALDERON AND MOTION TO DISMISS CASE FOR
MHM-2 MERCEDES PINEDA UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
1-16-15 [[47](#)]

DAVID JENKINS/Atty. for dbt.
JOINT DEBTOR DISMISSED

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(2); response filed

Disposition: Continued to April 2, 2015, at 9:00 a.m. to be heard
concurrently with the debtor's motion to confirm a modified plan

Order: Civil minute order

The trustee requests dismissal of this case because of unreasonable delay by the debtor that is prejudicial to creditors and because payments to the trustee are not current under the debtors' proposed plan. § 1307(c)(1), (4). The motion asserts a delinquency in the amount of \$4671.00 not including the January 25, 2015 payment.

In response, the debtor has filed a declaration attesting that a family member has fallen ill in early October 2014, which necessitated a hospitalization and financial assistance by the debtors. In addition, the debtor attests that he is current with his plan payments through January 25, 2015 and is \$609 ahead.

The debtor requests a continuance of the hearing to the date and time above to allow this motion to be heard concurrently with an anticipated motion to confirm a modified plan. A modified plan has been filed on February 15, 2015, with a hearing date of April 2, 2015. The motion to modify has been filed to resolve the existing arrearage and to account for the mortgage arrearage being higher than estimated originally. See Mot. Modify Plan at ¶ 3, ECF No. 55.

The trustee's reply indicates that debtors should have paid \$7785 but that they have paid \$7285 as of the date of the reply. The debtors are only \$500 behind at this point according to the trustee.

Because of the extenuating circumstances, and because the debtors have significantly reduced the delinquency and filed a modified plan, the court will grant the continuance. If the debtors are current as of the continued hearing and the motion has not otherwise been resolved or withdrawn, the court will deny the motion.

11. [14-15825](#)-A-13 PAUL GONZALES
DRJ-2
PAUL GONZALES/MV

MOTION TO VALUE COLLATERAL OF
CONSUMER PORTFOLIO SERVICES,
INC.
1-18-15 [[20](#)]

DAVID JENKINS/Atty. for dbt.

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 2005 PT Cruiser. 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 \$2300.

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 2005 PT Cruiser has a value of \$2300. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2300 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.

12. [14-15825](#)-A-13 PAUL GONZALES
DRJ-3
PAUL GONZALES/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
SAFE ONE CREDIT UNION
1-18-15 [[23](#)]

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Denied as moot

Order: Civil minute order

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).

The debtor has moved the court to value personal property collateral consisting of a 2007 Chrysler 300 purchased in 2008. The creditor states that its claim totals \$8438.47 as of the petition date.

The valuation sought in the motion is \$5000. The respondent creditor has filed an opposition asserting that the value of the collateral is \$9616.00.

The debtor's reply proposes to treat the respondent creditor's claim as fully secured and make appropriate adjustments to the plan payment and the respondent creditor's dividend. The court will accept the debtor's proposed resolution of this matter and deny the motion.

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. The court has considered the motion, the opposition, and reply.

IT IS ORDERED that the motion is denied as moot. The personal property collateral need not be valued given that the debtor will treat the respondent creditor's claim as fully secured. The respondent creditor has a fully secured claim of \$8438.47 as of the petition date, which claim is reduced by any payments made on its claim since the petition was filed.

13. [13-16127](#)-A-13 RICHARD/KAREN WENDT
DRJ-4
RICHARD WENDT/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO MODIFY PLAN
11-19-14 [[48](#)]

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

14. [13-17637](#)-A-13 BENJAMIN/SONIA VELO
AAM-2
BENJAMIN VELO/MV
ANDREW MOHER/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
12-22-14 [[53](#)]

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party according 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 seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement or other declaratory relief. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

15. [14-16040](#)-A-13 PRISCILLA ANGEL
PBB-1
PRISCILLA ANGEL/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
OLD REPUBLIC INSURANCE COMPANY
1-8-15 [[9](#)]

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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 strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 2829 Snipe Lane, Los Banos, CA.

The court values the collateral at \$250,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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 real property collateral 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 real property collateral located at 2829 Snipe Lane, Los Banos, CA, has a value of \$250,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

16. [12-19841](#)-A-13 MARIO/LILIBETH PIZARRO
BCS-2

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP,
PC FOR BENJAMIN C. SHEIN,
DEBTORS ATTORNEY(S)
1-20-15 [[39](#)]

BENJAMIN SHEIN/Atty. for dbt.

Final Ruling

Application: Allowance of Final 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

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 a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

Shein Law Group, PC's application for allowance of final 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 a final basis. The court allows final compensation in the amount of \$1034.00 and reimbursement of expenses in the amount of \$195.06. The aggregate allowed amount equals \$1229.06. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1229.06 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. The court also approves

on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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 distribution priorities of the confirmed plan.

17. [14-15848](#)-A-13 LARRY/TEODORICA BALDWIN MOTION TO AVOID LIEN OF HSBC
PBB-2 CREDIT CENTER, INC.
LARRY BALDWIN/MV 1-6-15 [[25](#)]
PETER BUNTING/Atty. for dbt.

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.

18. [14-13974](#)-A-13 FERNANDO POO AND PALOMA MOTION TO CONFIRM PLAN
TOG-3 HERNANDEZ 1-7-15 [[52](#)]
FERNANDO POO/MV
THOMAS GILLIS/Atty. for dbt.

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 Chapter 13 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 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.

19. [14-14575](#)-A-13 FREDDIE/PAULA ANDERSON OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
1-28-15 [[40](#)]

JOSEPH WEST/Atty. for dbt.

No tentative ruling

20. [10-15076](#)-A-13 KIMBERLY BIRD MOTION TO MODIFY PLAN
MNE-5 1-7-15 [[93](#)]
KIMBERLY BIRD/MV
M. ENMARK/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The case has been dismissed by an order entered February 16, 2015. The motion will be denied as moot.

21. [10-61678](#)-A-13 LETICIA ALVAREZ
MHM-1
MICHAEL MEYER/MV
JANINE ESQUIVEL/Atty. for dbt.
RESPONSIVE PLEADING, MOTION
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
1-6-15 [[50](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

22. [14-15879](#)-A-13 VIRGINIA MOORE
MHM-1

TIMOTHY SPRINGER/Atty. for dbt.

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
1-28-15 [[19](#)]

No tentative ruling

23. [14-15882](#)-A-13 DELIA GALLARDO
MHM-1

JEFFREY ROWE/Atty. for dbt.

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
1-29-15 [[15](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [14-15384](#)-A-13 DAVID/CHRISTINE RUBALCABA
JRL-1
DAVID RUBALCABA/MV
JERRY LOWE/Atty. for dbt.

MOTION TO CONFIRM PLAN
1-7-15 [[23](#)]

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 Chapter 13 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 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.

25. [10-12787](#)-A-13 DEBORAH CATALDO MOTION TO MODIFY PLAN
DMG-2 1-8-15 [[65](#)]
DEBORAH CATALDO/MV
D. GARDNER/Atty. for dbt.
ORDER 1/10/15

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

26. [09-61899](#)-A-13 PETER/KATHLEEN MCCARTHY MOTION TO DISMISS CASE FOR
MHM-2 UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
1-5-15 [[87](#)]

GLEN GATES/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [15-10441](#)-A-13 JAMES/SARAH SIDOTI
VRP-1
JAMES SIDOTI/MV
VARDUHI PETROSYAN/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
2-10-15 [[10](#)]

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.

28. [14-15400](#)-A-13 VENUS LONG
PK-1
VENUS LONG/MV
PATRICK KAVANAGH/Atty. for dbt.
OST 2/12/15

MOTION TO INCUR DEBT
2-11-15 [[31](#)]

Tentative Ruling

Motion: Approve Debtor's Incurring New Debt [Freightliner Cascadia Truck]

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

Disposition: Pending

Order: Prepared by moving party

The debtor and her non-filing spouse seek to incur new debt to finance the purchase of a 2012 Freightliner Cascadia truck. The truck is necessary for the debtor's husband's employment as an independent contractor with Werner Enterprises.

The terms of the proposed loan appear reasonable. The court's only

concern, however, is how the proposed financing will affect the confirmed plan's feasibility. Ordinarily, feasibility of the plan after a proposed financing is shown by amended Schedules I and J that factor in the proposed new debt service.

Here, amended Schedules I and J have been filed as of February 17, 2015 (ECF No. 39). After review of these amended schedules, the court cannot locate the monthly debt service (\$327.88 per week or approximately \$1409.88 per month) for the proposed new loan for the proposed Freightliner Cascadia purchase. The debt service does not appear on any attached statement for line 8a of Schedule I (regarding operation of a business) nor does it appear on Schedule J.

10:00 a.m.

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| 1. <u>13-15181</u> -A-13 LINDSAY LEMONS
<u>13-1124</u> GEG-2
STORMS ET AL V. LEMONS | FURTHER STATUS CONFERENCE RE:
MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LINDSAY LEMONS
12-16-14 [<u>46</u>] |
|--|--|

GLEN GATES/Atty. for mv.

No tentative ruling