

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

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

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: APRIL 28, 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. [12-11600](#)-A-13 SCOTT/RENATTA NAPIER MOTION TO AVOID LIEN OF
JMA-6 PERSOLVE, LLC
SCOTT NAPIER/MV 3-11-16 [[106](#)]
JOSEPH ARNOLD/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.

2. [16-10410](#)-A-13 JAMES SPRAGUE
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
3-31-16 [[20](#)]

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 provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e) (2) (A)-(B).

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.

3. [13-12512](#)-A-13 GARY ALEXANDER AND NANCY MOTION TO DISMISS CASE
MHM-2 BAKER 3-17-16 [[68](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [16-10314](#)-A-13 SOLOMON OLIVAS OBJECTION TO CONFIRMATION OF
RDW-1 PLAN BY CAM IX TRUST
CAM XI TRUST/MV 3-29-16 [[24](#)]
MARK ZIMMERMAN/Atty. for dbt.
REILLY WILKINSON/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the objection is overruled as moot.

5. [11-10218](#)-A-13 LAURA VOLZ MOTION TO DETERMINE FINAL CURE
MHM-2 AND MORTGAGE PAYMENT RULE
MICHAEL MEYER/MV 3002.1
3-24-16 [[105](#)]
GLEN GATES/Atty. for dbt.

Final Ruling

Motion: Determination of Final Cure and Payment of Required
Postpetition Amounts under Rule 3002.1(h)

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).

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the

trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response under subdivision (g)." Fed. R. Bankr. P. 3002.1(f). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not timely file it. *Id.*

The holder of the claim then has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to agree or dispute whether the debtor has paid in full the amount required to cure the default on the claim and whether the debtor is otherwise current on all payments under § 1322(b)(5).

A motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h). If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bankr. P. 3002.1(i).

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. It will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

6. [15-14720](#)-A-13 JOSEPH MCDERMOTT
JRL - 1
JOSEPH MCDERMOTT/MV
JERRY LOWE/Atty. for dbt.

MOTION TO CONFIRM PLAN
3-14-16 [[35](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor 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.

7. [16-10822](#)-A-13 FELIX/MARIA ZAMARIPA KH-1 U.S. BANK NATIONAL ASSOCIATION/MV KEVIN HARRIS/Atty. for mv. DISMISSED MOTION FOR RELIEF FROM AUTOMATIC STAY 4-1-16 [[10](#)]

Final Ruling

The case dismissed, the matter is denied as moot.

8. [15-14230](#)-A-13 ALVARO HERNANDEZ AND PBB-1 GISELLE MARTINEZ ALVARO HERNANDEZ/MV PETER BUNTING/Atty. for dbt. ORDER ON STIPULATION, ECF NO. 59 PRETRIAL CONFERENCE RE: MOTION TO VALUE COLLATERAL OF BALBOA THRIFT AND LOAN 12-16-15 [[32](#)]

Final Ruling

The motion resolved by order on stipulation, ECF #59, the pretrial conference is concluded.

9. [15-14230](#)-A-13 ALVARO HERNANDEZ AND PBB-2 GISELLE MARTINEZ ALVARO HERNANDEZ/MV PETER BUNTING/Atty. for dbt. MOTION TO CONFIRM PLAN 3-17-16 [[71](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor 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.

10. [16-11032](#)-A-13 EMILY HAROS MOTION FOR RELIEF FROM
THL-2 AUTOMATIC STAY
MRO INVESTMENTS, INC./MV 4-14-16 [[18](#)]
TYLER LESTER/Atty. for mv.

Final Ruling

The case dismissed, the matter is denied as moot.

11. [12-60233](#)-A-13 TREVOR HOOD MOTION TO DISMISS CASE
MHM-3 3-17-16 [[68](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [16-10434](#)-A-13 JOSE ANGULO MOTION TO DISMISS CASE
MHM-1 3-31-16 [[23](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [15-13935](#)-A-13 RANDALL/SHARI WARKENTIN CONTINUED OBJECTION TO CLAIM OF
JRL-1 MIDLAND CREDIT MANAGEMENT,
RANDALL WARKENTIN/MV INC., CLAIM NUMBER 9
2-22-16 [[54](#)]

JERRY LOWE/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: Continued hearing date; no 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). 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 raised concerns at the prior hearing regarding whether any activity such as payments had been made on the account that is the basis for this claim. The debtors have not incurred any charges on the account or made any payments on the account for over 5 years. Five years prior to April 14, 2016 is more than 4 years before the petition date. The court will sustain the objection based on California Code of Civil Procedure § 337(1), (2). See Civ. Mins. Hr'g on March 31, 2016, ECF No. 76.

14. [15-13935](#)-A-13 RANDALL/SHARI WARKENTIN CONTINUED OBJECTION TO CLAIM OF
JRL-2 MIDLAND CREDIT MANAGEMENT,
RANDALL WARKENTIN/MV INC., CLAIM NUMBER 10
2-22-16 [[58](#)]

JERRY LOWE/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: Continued hearing date; no 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). 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 raised concerns at the prior hearing regarding whether any activity such as payments had been made on the account that is the basis for this claim, and what time period has elapsed since the last item on the account. The debtors have not incurred any charges on the account or made any payments on the account for over 5 years. Five years prior to April 14, 2016 is more than 4 years before the

petition date. The court will sustain the objection based on California Code of Civil Procedure § 337(1), (2). See Civ. Mins. Hr'g on March 31, 2016, ECF No. 76.

15. [15-13935](#)-A-13 RANDALL/SHARI WARKENTIN CONTINUED OBJECTION TO CLAIM OF
JRL-3 ATLAS ACQUISITIONS LLC, CLAIM
RANDALL WARKENTIN/MV NUMBER 12
2-22-16 [[62](#)]
JERRY LOWE/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: Continued hearing date; no 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). 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 raised concerns at the prior hearing regarding whether any activity such as payments had been made on the account that is the basis for this claim, and what time period has elapsed since the last item on the account. The debtors have not incurred any charges on the account or made any payments on the account for over 5 years. Five years prior to April 14, 2016 is more than 4 years before the petition date. The court will sustain the objection based on California Code of Civil Procedure § 337(1), (2). See Civ. Mins. Hr'g on March 31, 2016, ECF No. 76.

16. [11-12941](#)-A-13 ROBERT/MARSHA LANG MOTION TO MODIFY PLAN
JMA-6 3-7-16 [[86](#)]
ROBERT LANG/MV
JOSEPH ARNOLD/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.

17. [14-14444](#)-A-13 IAN/JENNIFER STRACHAN MOTION TO MODIFY PLAN
PBB-2 3-22-16 [[41](#)]
IAN STRACHAN/MV
PETER BUNTING/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.

18. [16-10445](#)-A-13 DONALD/NANCY NEWSOME
VRP-1
DONALD NEWSOME/MV
VARDUHI PETROSYAN/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GM FINANCIAL
3-7-16 [[13](#)]

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 2012 Nissan Rogue S. 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 \$12,895.

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 2012 Nissan Rogue S. has a value of \$12,895. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$12,895 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.

19. [15-13348](#)-A-13 CYRUSS/KRISTEN LAMARSNA MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 3-30-16 [[61](#)]
SCOTT LYONS/Atty. for dbt.
BRETT RYAN/Atty. for mv.

Final Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014.

The debtor's address has changed. The proof of service shows that the motion was not mailed to the debtor's current address indicated on the change of address form filed on the court's docket. Fed. R. Bankr. P. 7004(b)(9). This change of address form was filed on January 6, 2016.

20. [15-14153](#)-A-13 KEVIN/MACKENZIE FERREIRA MOTION TO CONFIRM PLAN
CAH-2 3-16-16 [[57](#)]
KEVIN FERREIRA/MV
C. HUGHES/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

21. [11-62956](#)-A-12 MICHAEL SMITH AND SANDRA MOTION FOR ENTRY OF DISCHARGE
FW-8 ESTRADA-SMITH 3-30-16 [[84](#)]
MICHAEL SMITH/MV
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Entry of Chapter 12 Discharge

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

Disposition: Granted

Order: Prepared and lodged by the movant no later than May 3, 2016 so that the order may be signed and entered no later than 10 days after the hearing

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 debtors request entry of a chapter 12 discharge. Debtors have made all payments required by the confirmed plan. Debtors have complied with § 1228 and have not been required to pay any domestic support obligations. Section 1228(f), moreover, has been satisfied in that there is no reasonable cause to believe that § 522(q)(1) is applicable to the debtor and there is not pending any proceeding described in § 1228(f)(2).

22. [16-10359](#)-A-13 MATTHEW/KIMBERLI CARROLL OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
4-18-16 [[30](#)]
SCOTT LYONS/Atty. for dbt.

No tentative ruling.

23. [15-14062](#)-A-13 JOHN/NANCY ALVA CONTINUED MOTION TO VALUE
TCS-2 COLLATERAL OF CONSUMER
JOHN ALVA/MV PORTFOLIO SERVICES
1-29-16 [[29](#)]
TIMOTHY SPRINGER/Atty. for dbt.
STIPULATION ECF NO. 47

Tentative Ruling

This matter has been resolved by stipulation. The matter is dropped from calendar as moot. The court anticipates that the parties shall submit an order approving the stipulation.

24. [16-10063](#)-A-13 JENNYFER CUNANAN
PLG-1
JENNYFER CUNANAN/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO CONFIRM PLAN
3-18-16 [[20](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor 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. [12-10166](#)-A-13 CATALINA MENDOZA
UST-1
TRACY DAVIS/MV
THOMAS GILLIS/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR REVIEW OF FEES
3-25-16 [[50](#)]

No tentative ruling.

26. [13-13666](#)-A-13 JOHN COOK
BCS-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP,
PC FOR BENJAMIN C. SHEIN,
DEBTORS ATTORNEY(S)
3-21-16 [[35](#)]

BENJAMIN SHEIN/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, Shein Law Group, PC has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$4005.00 and reimbursement of expenses in the amount of \$295.16.

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.

Shein Law Group, PC'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 \$4005.00 and reimbursement of expenses in the amount of \$295.16. The aggregate allowed amount equals \$4300.16. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4300.16 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.

27. [12-18868](#)-A-13 LETICIA LEAL MOTION TO DISMISS CASE
MHM-3 3-17-16 [[60](#)]
MICHAEL MEYER/MV
KARNEY MEKHITARIAN/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [15-10169](#)-A-13 JAMES/LINDA COWAN MOTION TO SELL
RSW-3 4-13-16 [[48](#)]
JAMES COWAN/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Sell Property [Real Property]

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below and approved as to form and content by the Chapter 13 trustee

Property: 516 Olson Way, Arvin, CA

Buyer: Daniel Juarez

Sale Price: \$190,000 (and commission to broker or brokers of 6%)

Sale Type: Private sale subject to overbid opportunity

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).

Confirmation of a Chapter 13 plan reverts property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

Section 363(b) (1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b) (1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order

provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

29. [15-13775](#)-A-13 BEATRICE HERNANDEZ MOTION TO DISMISS CASE
MHM-1 3-17-16 [[16](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2000.

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 \$2000. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

30. [15-13478](#)-A-13 MICHAEL/LEEANN DAVIS MOTION TO MODIFY PLAN
SAH-1 3-9-16 [[30](#)]
MICHAEL DAVIS/MV
SUSAN HEMB/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

31. [16-10478](#)-A-13 VICTOR ISLAS AND LORENA MOTION TO DISMISS CASE
MHM-1 GONZALEZ 3-31-16 [[18](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

32. [13-11484](#)-A-13 AUDREY CARTER MOTION TO DISMISS CASE
MHM-3 3-17-16 [[82](#)]
MICHAEL MEYER/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2673.53.

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 \$2673.53. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

33. [15-13390](#)-A-13 MARIA SANCHEZ
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO DISMISS CASE
3-31-16 [42]

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 \$1998.

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.

34. [12-60092](#)-A-13 GARY/CHRISTINA STAHL
MHM-3
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
3-17-16 [[50](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.