

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street
Department A, Courtroom 11
Fresno, California

TUESDAY

JUNE 9, 2015

9:00 A.M. CHAPTERS 13 AND 12 CASES

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.

1. [13-14006](#)-A-13 DENNIS NAJARIAN CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 3-9-15 [[44](#)]
THOMAS ARMSTRONG/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [13-14006](#)-A-13 DENNIS NAJARIAN MOTION TO MODIFY PLAN
THA-3 4-28-15 [[51](#)]
DENNIS NAJARIAN/MV
THOMAS ARMSTRONG/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

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.

3. [15-11208](#)-A-13 BERTHA GIL MOTION TO VALUE COLLATERAL OF
TOG-1 WELLS FARGO BANK, N.A.
BERTHA GIL/MV 5-2-15 [[14](#)]
THOMAS GILLIS/Atty. for dbt.

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 14580 Road 28 ½, Madera, CA.

The court values the collateral at \$165,000. 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 14580 Road 28 ½, Madera, CA, has a value of \$165,000. 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.

4. [14-13016](#)-A-13 ANTHONY/VIRGINIA GONZALES MOTION TO MODIFY PLAN
PBB-1 4-27-15 [[32](#)]
ANTHONY GONZALES/MV
PETER BUNTING/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

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.

5. [15-10424](#)-A-13 JAYCE/LISA LEWIS OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
5-14-15 [[23](#)]

JERRY LOWE/Atty. for dbt.

No tentative ruling.

6. [13-12133](#)-A-13 CARL/MARI WHITFORD MOTION TO MODIFY PLAN
MAZ-3 4-23-15 [[64](#)]
CARL WHITFORD/MV
MARK ZIMMERMAN/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

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.

7. [15-10935](#)-A-13 JOSEPH DIAZ
MHM-1
MICHAEL MEYER/MV
MATIN RAJABOV/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
5-7-15 [[57](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

8. [10-60037](#)-A-13 CURT/JACLYN FLEMING
PLF-4

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
4-28-15 [[55](#)]

PETER FEAR/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

In this Chapter 13 case, Fear Law Group, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1943.50 and reimbursement of expenses in the amount of \$165.94.

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.

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 Law Group'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 \$1943.50 and reimbursement of expenses in the amount of \$165.94. The aggregate allowed amount equals \$2109.44, and this amount is in addition to the amount of the no-look fee of \$3500 previously approved as part of plan confirmation. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2109.44 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.

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.

9. [10-10638](#)-A-13 ROBERT/RITA CUPPS
RLF-3
ROBERT CUPPS/MV

MOTION FOR ENTRY OF DISCHARGE
AND/OR MOTION FOR WAIVER OF
REQUIREMENT TO COMPLETE
DEBTOR'S 11 U.S.C. 1328
CERTIFICATE AND CERTIFICATE OF
CHAPTER 13 DEBTOR REGARDING 11
U.S.C. 522(Q) EXEMPTIONS
5-8-15 [[63](#)]

JEFF REICH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Obtain Discharge and Waiver of Requirement to File § 1328
Certifications

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

Disposition: Granted in part, denied in part

Order: Civil minute order

NONCOMPLIANCE WITH RULE 9037

The attorney filing the papers for this matter has not complied with

Rule 9037. The attorney shall file an ex parte application to seal and restrict public access to the pertinent filed documents under § 107(c)(1) and Rule 9037(c) or (d) no later than June 11, 2015. A redacted copy of any restricted, sealed documents shall be filed to replace the documents restricted and sealed. The trustee shall file a motion to enforce this directive should the debtor's counsel not timely comply with it.

WAIVER OF SECTION 1328 CERTIFICATIONS

Local Rule 1016-1's Notice Requirement

As the trustee notes, more than 60 days has passed since the joint debtor identified in the motion has died. See LBR 1016-1(a). The court will waive this requirement given the statements made by Jeff Reich in his declaration filed at docket no. 73.

Local Rule 1016-1(a) also requires a "Notice of Death" to be filed. Such a notice has not been filed or combined with the motion as permitted by Local Rule 1016-1(b). The court, however, will construe the present motion as being a notice of death. In the future, counsel for the debtors must comply with the notice requirement of Rule 1016-1(b).

Waiver of Certification Requirement and Further Administration

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

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

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

DISCHARGE OF DEBTOR

For the reasons stated in the trustee's response, the court will deny the request to enter discharge without prejudice as being premature. The trustee's Final Report and Account was filed as of June 2, 2015. The time for objection to this report and account has not yet run. See Not. Filing Tr.'s Final Rpt. & Acct., ECF No. 72 (providing for 33 days for objection).

Additionally, the court does not ordinarily grant discharges pursuant to motion. LBR 5009-1 provides a procedure that must be followed before the court will grant a discharge. Accordingly, the request for entry of discharge will be denied without prejudice.

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.

Debtor Robert Lewis Cupps's Motion to Obtain Discharge and Waiver of Requirement to File § 1328 Certifications has been presented to the court. Having considered the motion, the trustee's response, and the declaration filed in reply, and having heard oral argument, if any, at the hearing on the motion,

IT IS ORDERED that the motion is granted in part to the extent it requests waiver of the § 1328 certifications for deceased debtor Rita Ann Cupps, which certifications include the certification regarding § 522(q) exemptions. The court further waives the 60-day deadline for filing the Notice of Death under LBR 1016-1(a), and treats the motion as such notice.

IT IS FURTHER ORDERED that the motion is denied in part without prejudice to the extent it requests entry of debtors' discharge before the time for objection to the trustee's Final Report and Account has run and in the absence of procedural compliance with Local Rule 5009-1.

IT IS FURTHER ORDERED that counsel for the debtor shall file an ex parte motion no later than June 11, 2015, to resolve any noncompliance with Rule 9037 of the Federal Rules of Bankruptcy Procedure, and the trustee shall bring a motion to enforce this provision of the order if the debtor's counsel does not timely comply with it.

10. [15-10639](#)-A-13 RACHEL RIVERA MOTION TO VALUE COLLATERAL OF
TCS-1 SANTANDER CONSUMER USA
RACHEL RIVERA/MV 5-1-15 [[19](#)]
TIMOTHY SPRINGER/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 Ford Fusion. 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 \$7556.

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 Ford Fusion has a value of \$7556. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7556 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.

11. [15-10441](#)-A-13 JAMES/SARAH SIDOTI

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-18-15 [[35](#)]

VARDUHI PETROSYAN/Atty. for dbt.
\$77.00 INSTALLMENT FEE PAID

Final Ruling

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

12. [14-11045](#)-A-13 CATHERINE NELSON
PLF-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP
FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
5-5-15 [[57](#)]

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 Law Group has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$9,171.00 and reimbursement of expenses in the amount of \$416.81.

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 Law Group'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 \$9,171.00 and reimbursement of expenses in the amount of \$416.81. The aggregate allowed amount equals \$9,587.81. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$9,587.81 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.

13. [14-11851](#)-A-13 MARK DAFFERN
MAZ-3
MARK DAFFERN/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO INCUR DEBT
5-21-15 [[61](#)]

Tentative Ruling

Motion: Approve Debtor's Incurring New Debt [Vehicle Loan]

Notice: LBR 9014-1(f)(2); no 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). 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).

INCURRENCE OF NEW DEBT

The debtor seeks to incur new debt to finance the purchase of a vehicle, a 2015 Toyota Camry. Amended Schedule J has been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The debtor is current with his chapter 13 plan payments. The financing to purchase the vehicle will result in a monthly loan payment that is less than the current auto

loan for the debtor's existing car, a Toyota pickup, which loan will be paid in full prior to the financing for the new vehicle, a 2015 Toyota Camry. The debtor's plan also proposes to pay unsecured creditors 100% dividend. The court will grant the motion, and the trustee will approve the order as to form and content.

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 Mark Daffern's motion to incur debt for a vehicle purchase has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the debtor's incurrence of new debt to purchase a 2015 Toyota Camry on the condition that the existing debt secured by the debtor's present vehicle, a 2013 Toyota pickup, is paid in full on or before the date the new loan debt is extended to the debtor. The court authorizes new debt financing from Toyota Motor Credit in the approximate amount of \$28,093.13 at an interest rate of 13.20% payable at \$566.91 per month.

14. [09-15156](#)-A-12 JOSE/LUCY TOSTE
WW-14
JOSE TOSTE/MV
RILEY WALTER/Atty. for dbt.

MOTION FOR ENTRY OF DISCHARGE
5-12-15 [[185](#)]

Final Ruling

Motion: Entry of Discharge Pursuant to 11 U.S.C. § 1228(a) and (f)

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

Disposition: Granted

Order: Prepared by the movant and approved by the chapter 12 trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 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 have completed all required payments under their chapter 12 plan. The final payment to the chapter 12 trustee has been made. The secured claim of Ford Motor Credit has been paid in full. Other secured claims have been paid through collateral sales or are deficiency claims paid through the plan as unsecured claims. The Final Report and Account has been entered by the trustee stating that the estate has been fully administered. No felonies or debts of the kind described in § 1228(f) are applicable to the debtors. No domestic support obligations are outstanding.

For the reasons stated in the motion and supporting declaration, the

court will enter an order discharging the debtors pursuant to § 1228(a). The trustee shall approve the order as to form and content.

15. [14-15265](#)-A-13 DANIEL/ERICA DE LA CERDA MOTION TO CONFIRM PLAN
SL-2 4-24-15 [[39](#)]
DANIEL DE LA CERDA/MV
STEPHEN LABIAK/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [14-14575](#)-A-13 FREDDIE/PAULA ANDERSON MOTION TO DISMISS CASE
MHM-2 5-7-15 [[51](#)]
MICHAEL MEYER/MV
JOSEPH WEST/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

The debtors have failed to comply with the 75-day order the court imposed for achieving confirmation of a chapter 13 plan in this case. The court has issued an order providing that a plan must be confirmed no later than the first hearing date available after the 75-day period that commenced on the February 19, 2015, hearing date. The first hearing date available after the 75-day period was May 21, 2015. A plan has not been confirmed. Nor has the current plan on file been set for hearing.

The debtors argue that they have substantially complied with the duties set forth under the Bankruptcy Code. The debtors are incorrect. Section 1307(c)(3) requires that the debtors timely file a plan. The court does not construe this provision as having been satisfied by merely placing a plan on the docket. Instead, it requires placing a plan on the docket and pursuing confirmation of that plan. If the provision were interpreted to mean merely placing a plan on the docket without taking any action to confirm such plan, then the provision would elevate form over substance and run contrary to the other provisions of chapter 13 such as § 1324(b), which require a timely hearing on confirmation of a plan (45 days after the § 341 creditors' meeting), and § 1307(c)(5), which allows for dismissal if plan confirmation is denied and a request for additional time is denied, a provision that operates to ensure confirmation occurs in a timely manner. The court will not interpret § 1307(c)(3) in a manner inconsistent with other related statutory provisions of chapter 13 of Title 11.

Furthermore, § 1324(b) supports dismissal. The date that is 45-days

after the § 341 meeting was concluded is March 13, 2015, and a confirmation hearing that results in a confirmed plan has still not been held. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (3) to dismiss the case.

17. [15-10979](#)-A-13 BELEN VALENCIA MOTION TO CONVERT CASE FROM
MHM-1 CHAPTER 13 TO CHAPTER 7
MICHAEL MEYER/MV 5-8-15 [[35](#)]
MIKALAH LIVIAKIS/Atty. for dbt.
DISMISSED 5/19/15

Final Ruling

The case dismissed, the motion is denied as moot.

18. [15-11284](#)-A-13 ORA HOWARD MOTION TO CONFIRM PLAN
ALG-1 4-1-15 [[8](#)]
ORA HOWARD/MV
JANINE ESQUIVEL/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. [11-16885](#)-A-13 DAVID/DELIA HAYES
BCS-2

MOTION BY BENJAMIN C. SHEIN TO
WITHDRAW AS ATTORNEY
5-22-15 [[75](#)]

BENJAMIN SHEIN/Atty. for dbt.

No tentative ruling.

20. [15-10989](#)-A-13 RICARDO SANCHEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-21-15 [[16](#)]

ERIC ESCAMILLA/Atty. for dbt.

Final Ruling

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

21. [14-14793](#)-A-13 PATRICIA ZUNIGA
SL-1
PATRICIA ZUNIGA/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO CONFIRM PLAN
4-22-15 [[96](#)]

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

DISCUSSION

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

VIOLATION OF LOCAL RULES

Moving party has used SL-1 as the docket control number on this motion in violation of Local Rule 9014-1(c)(3). Future failure to comply with local rules may result in summary denial of the motion. LBR 1001-1(g).

22. [14-13895](#)-A-13 VERONICA MARTINEZ MOTION TO MODIFY PLAN
PLG-3 4-15-15 [[90](#)]
VERONICA MARTINEZ/MV
RABIN POURNAZARIAN/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

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.

23. [12-16046](#)-A-13 ERNEST/KATHERINE SHELTON MOTION TO INCUR DEBT
TCS-7 6-2-15 [[100](#)]
ERNEST SHELTON/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Approve Debtor's Incurring New Debt [Vehicle Loan]

Notice: LBR 9014-1(f)(3) and order shortening time for notice; no 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). 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).

INCURRENCE OF NEW DEBT

The debtor seeks to incur new debt to finance the purchase of a vehicle, a 2013 Nissan Altima from Honda North. The purchase price is approximately \$14,900.00. The reason for the purchase is that the debtors' son requires a vehicle for work, and the debtors' existing vehicles are unavailable for the debtors' son to use regularly.

Although Amended Schedules I and J have not been filed, the loan will

be paid by the debtor's son outside the chapter 13 plan, which suggests that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

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 debtors' motion to incur debt for a vehicle purchase has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the debtors' incurrence of new debt solely for the purpose of purchasing a 2013 Nissan Altima for the debtors' son, and the new debt is authorized up to the amount of \$15,000 with an estimated monthly loan payment (principal and interest) of \$389.10.