

**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: JULY 25, 2019
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [19-11806](#)-A-13 **IN RE: ANNIE PUMPHREY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-8-2019 [\[16\]](#)

MARK ZIMMERMAN
\$231.00 FINAL INSTALLMENT FEE PAID 7/8/19

Final Ruling

The installment having been paid, the order to show cause is discharged. The case will remain pending.

2. [14-15324](#)-A-13 **IN RE: ADAM/KARALIN BERG**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. DEBTORS ATTORNEY(S)
6-26-2019 [\[58\]](#)

PETER FEAR

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 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Office of Fear Waddell, P.C. has applied for an allowance of a second interim and final compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,444 and reimbursement of expenses in the amount of \$131.78. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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.

Law Office of Fear Waddell, P.C.’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 \$2,444 and reimbursement of expenses in the amount of \$131.78. The aggregate allowed amount equals \$2,575.78. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2,575.78 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 directly by the debtor after completion of the plan’s term. 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 terms of the confirmed plan.

3. [19-10438](#)-A-13 **IN RE: JOSE/JENNIFER RODRIGUEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
5-31-2019 [\[32\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ

No Ruling

4. [18-14242](#)-A-13 **IN RE: ELIZABETH FRANCO**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-24-2019 [[64](#)]

MICHAEL MEYER/MV
SCOTT LYONS
RESPONSIVE PLEADING

Final Ruling

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

Disposition: Overruled as moot

Order: Civil minute order

The debtor claimed an exemption for \$175,000 under section 704.730 of the California Code of Civil Procedure. ECF No. 1. The trustee objects to the exemption, contending that the debtor has not specified the subsection and basis for the exemption claim amount.

But, since the trustee brought the objection, the debtor filed an Amended Schedule C, amending the exemption questioned by the objection. ECF No. 69. As such, the objection will be overruled as moot.

5. [19-11449](#)-A-13 **IN RE: DAVID DELAO**
[MHM-2](#)

MOTION TO DISMISS CASE
6-21-2019 [[29](#)]

MICHAEL MEYER/MV
VARDUHI PETROSYAN
RESPONSIVE PLEADING

Final Ruling

As the trustee has filed a withdrawal of this motion, the court deems it to have been voluntarily dismissed. ECF No. 58.

6. [19-11449](#)-A-13 **IN RE: DAVID DELAO**
[VRP-2](#)

MOTION TO VALUE COLLATERAL OF BANK OF STOCKTON
6-21-2019 [\[43\]](#)

DAVID DELAO/MV
VARDUHI PETROSYAN

Tentative Ruling

Motion: Value Collateral [Personal Property; 2010 Infinity G37 vehicle]

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

Disposition: Denied

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).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2010 Infinity G37. The debtor purchased the vehicle on November 30, 2016, 862 days prior to the April 11, 2019 filing of this case. ECF No. 45 at 1. In Schedule D, the debtor also says that he incurred the loan at issue in November 2016. Given that the Infinity G class vehicles are typically acquired for personal and not business use, and the debtor does not say otherwise in the motion, the court infers that the subject Infinity G37 vehicle was acquired for the debtor's personal use.

In other words, this is a purchase money loan, subject to the 910-day rule of the hanging paragraph of section 1325(a). The debt

secured by the vehicle was incurred within the 910-day period preceding the date of the petition. It was incurred 862 days prior to the petition date. Thus, the court cannot strip down the loan. The motion will be denied.

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 considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied.

7. [14-14151](#)-A-13 **IN RE: SALVADOR/MADELINE NAVARRO**
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
6-25-2019 [\[68\]](#)

PETER FEAR

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 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Office of Fear Waddell, P.C. has applied for an allowance of a second interim and final compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5,519.50 and reimbursement of expenses in the amount of \$194.40. The applicant also asks that the court allow on a final basis all prior

applications for fees and costs that the court has previously allowed on an interim basis.

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.

Law Office of Fear Waddell, P.C.'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 \$5,519.50 and reimbursement of expenses in the amount of \$194.40. The aggregate allowed amount equals \$5,713.90. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5,713.90 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 directly by the debtor after completion of the plan's term. 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 terms of the confirmed plan.

8. [19-10754](#)-A-13 **IN RE: PAUL/JUANITA SANCHEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
6-24-2019 [[21](#)]

MICHAEL MEYER/MV
JERRY LOWE
WITHDRAWN

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

9. [19-10558](#)-A-13 **IN RE: GWENDOLYN BROWN**
[DRJ-2](#)

MOTION TO CONFIRM PLAN
6-20-2019 [[49](#)]

GWENDOLYN BROWN/MV
DAVID JENKINS

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 has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

10. [19-10558](#)-A-13 **IN RE: GWENDOLYN BROWN**
[DRJ-3](#)

MOTION TO VALUE COLLATERAL OF LENDMARK FINANCIAL SERVICES,
INC.
6-23-2019 [\[59\]](#)

GWENDOLYN BROWN/MV
DAVID JENKINS

Final Ruling

Motion: Value Collateral [Personal Property; 2004 Saturn Vue 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 2004 Saturn Vue vehicle. The debt owed to the respondent is not secured by a purchase money security

interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$2,800.

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 2004 Saturn Vue vehicle has a value of \$2,800. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2,800 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. [19-10564](#)-A-13 **IN RE: VICTOR ALVAREZ**
[MHM-3](#)

MOTION TO DISMISS CASE
6-24-2019 [\[33\]](#)

MICHAEL MEYER/MV
THOMAS MOORE
RESPONSIVE PLEADING

No Ruling

12. [19-10569](#)-A-13 **IN RE: TOMMY FIELDS**
[MHM-3](#)

MOTION TO DISMISS CASE
5-30-2019 [\[42\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

13. [19-10569](#)-A-13 **IN RE: TOMMY FIELDS**
[RSW-1](#)

MOTION TO CONFIRM PLAN
6-7-2019 [[47](#)]

TOMMY FIELDS/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

14. [14-14478](#)-A-13 **IN RE: APRIL MAXFIELD**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
6-24-2019 [[71](#)]

PETER FEAR

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 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Office of Fear Waddell, P.C. has applied for an allowance of a second interim and final compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$1,995.50 and reimbursement of expenses in the amount of \$115.95. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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.

Law Office of Fear Waddell, P.C.'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 \$1,995.50 and reimbursement of expenses in the amount of \$115.95. The aggregate allowed amount equals \$2,111.45. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2,111.45 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 directly by the debtor after completion of the plan's term. 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 terms of the confirmed plan.