

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

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

**PRE-HEARING DISPOSITIONS**

**DAY: THURSDAY**  
**DATE: AUGUST 20, 2015**  
**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.

**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. [10-63700](#)-A-13 JOSE/IRMA MALDONADO MOTION TO DISMISS CASE  
MHM-5 7-7-15 [[119](#)]  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

2. [12-17703](#)-A-13 PAUL/SUSAN ANTHONY MOTION FOR COMPENSATION BY THE  
BCS-4 LAW OFFICE OF FISHERMAN, LARSEN  
& CALLISTER FOR BENJAMIN C.  
SHEIN, DEBTORS ATTORNEY(S)  
7-21-15 [[88](#)]  
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, Fishman, Larsen, & Callister has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$10,806.50 and reimbursement of expenses in the amount of \$720.53.

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.

Fishman, Larsen & Callister'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 \$10,806.50 and reimbursement of expenses in the amount of \$720.53. The aggregate allowed amount equals \$11,527.03. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$11,527.03 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.

3. [13-10004](#)-A-13 BRANDON/CASEY HOWARD MOTION TO DISMISS CASE  
MHM-2 7-8-15 [[53](#)]  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

4. [15-12205](#)-A-13 STEVEN/JOANNA GOSSETT  
AP-1  
EVERBANK/MV  
RAYMOND ISLEIB/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY EVERBANK  
7-21-15 [[17](#)]

### **Final Ruling**

**Objection:** Objection to Confirmation of Chapter 13 Plan

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

### **MOOTNESS OF OBJECTION**

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

Because the debtors have filed their First Modified Chapter 13 Plan, set for hearing October 1, 2015, the court will overrule the objection as it is moot. The plan to which Everbank objects is no longer a plan that will be confirmed (and that plan has also been withdrawn).

### **75-DAY ORDER**

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

### **CIVIL MINUTE ORDER**

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

Everbank's objection to confirmation has been presented to the court. Because the objection has become moot by the filing of a modified plan and the withdrawal of the plan to be confirmed,

IT IS ORDERED that the objection is overruled. A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1)

5. [15-10208](#)-A-13 JUAN CASTRO AND MANDY MOTION TO CONFIRM PLAN  
TOG-3 PEREZ 7-2-15 [[43](#)]  
JUAN CASTRO/MV  
THOMAS GILLIS/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

6. [11-61110](#)-A-13 ROBERTO/MARGARITA NOTICE OF DEATH AND MOTION FOR  
GONZALEZ ORDER WAIVING REQUIREMENTS THAT  
ROBERTO GONZALEZ/MV DEBTOR MARGARITA GONZALEZ FILE  
DEBTOR'S SECTION 11 U.S.C.  
522(Q) AND 1328 CERTIFICATES  
AND FOR WAIVER OF REQUIREMENT  
FOR MARGARITA GONZALEZ TO  
COMPLETE THE PERSONAL  
7-23-15 [[65](#)]

THOMAS ARMSTRONG/Atty. for dbt.

**Final Ruling**

**Motion:** Waiver of Requirement to File § 1328 Certifications and Waiver of Requirement to Complete Personal Financial Management Course

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

**Disposition:** Granted

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

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

The motion 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.

The motion also requests a waiver of the requirement to complete, after the petition date, the personal financial management course described in § 111. See 11 U.S.C. § 1328(g)(1). But this post-petition requirement does not apply when the debtor is a person described in § 109(h)(4). *Id.* § 1328(g)(2). The court finds that the joint-debtor's death constitutes incapacity under § 109(h)(4) and grants a waiver of the § 1328(g)(2) requirement.

The order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. Plan payments have been completed. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. And the court finds the continued administration of the estate is possible and in the best interests of the parties. The court further waives the requirement that the debtor complete an instructional course concerning personal financial management as required by § 1328(g)."

7. [10-64011](#)-A-13 CATHY HULL  
MHM-1  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
7-7-15 [\[65\]](#)

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

8. [15-11814](#)-A-13 DONALD OBRIEN  
MHM-1  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE  
7-9-15 [[32](#)]

**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 \$2300 as of July 9, 2015.

**CIVIL MINUTE ORDER**

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

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

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

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

9. [15-10424](#)-A-13 JAYCE/LISA LEWIS CONTINUED OBJECTION TO CLAIM OF  
JRL-1 CHRYSLER CAPITAL, CLAIM NUMBER  
JAYCE LEWIS/MV 1  
6-8-15 [[30](#)]  
JERRY LOWE/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

10. [15-11829](#)-A-13 ANTONIO BUSTAMANTE AND MOTION TO CONFIRM PLAN  
TOG-3 GABRIELA LOPEZ 7-8-15 [[22](#)]  
ANTONIO BUSTAMANTE/MV  
THOMAS GILLIS/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

11. [10-61130](#)-A-13 WALTER/BRANKA RISTIC MOTION TO DISMISS CASE  
MHM-2 7-7-15 [[69](#)]  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

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.

12. [10-62631](#)-A-13 NORBERT SOUSA DUARTE MOTION TO DISMISS CASE  
MHM-3 7-7-15 [[80](#)]  
MICHAEL MEYER/MV  
SCOTT LYONS/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 \$3988.16.

## 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 \$3988.16. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

13. [15-11231](#)-A-13 ISIAIAH/JENNIFER ISLAS CONTINUED MOTION TO VALUE  
ACW-2 COLLATERAL OF GM FINANCIAL  
ISIAIAH ISLAS/MV 5-26-15 [[39](#)]  
ANDY WARSHAW/Atty. for dbt.

### Final Ruling

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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. The court continued the hearing to allow a

supplemental declaration to be filed addressing the court's concerns. The court specifically addressed the hanging paragraph of 11 U.S.C. § 1325(a) and stated that it could not determine whether such provision applied. No supplemental declaration was filed and no notice of continued hearing was filed.

Because the court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

14. [15-11231](#)-A-13 ISIAIAH/JENNIFER ISLAS CONTINUED MOTION TO CONFIRM  
ACW-3 PLAN  
ISIAIAH ISLAS/MV 5-26-15 [[33](#)]  
ANDY WARSHAW/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The plan treats the claim of Americredit Financial Services, Inc. dba GM Financial ("GM Financial") in Class 2. This claim is secured by a motor vehicle described as a 2006 Chevrolet Impala. See Claim No. 1. GM Financial has filed a proof of claim for \$7892.07.

The plan purports *not* to reduce GM Financial's Class 2 claim based on the value of the collateral. However, the amount of GM Financial's Class 2 claim is \$7468.68, so it appears that the plan does in fact attempt to reduce GM Financial's claim based on the value of the collateral.

The court notes that a motion to value collateral was filed by the debtors and denied (ACW-2). The motion attempts to value the collateral at \$7808.68. This is nearly the amount claimed by GM Financial in Claim No. 1.

Because the plan purports to reduce the class 2 claim of respondent without having a motion to value collateral decided in conjunction with or before plan confirmation, the court cannot confirm the plan. LBR 3015-1(j); see also Ch. 13 Plan § 2.09(c).

15. [15-12232](#)-A-13 TERESA VANDERLINDEN OBJECTION TO CONFIRMATION OF  
APN-1 PLAN BY WELLS FARGO BANK, N.A.  
WELLS FARGO BANK, N.A./MV 6-26-15 [[15](#)]  
PETER MACALUSO/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

16. [14-13835](#)-A-13 PATRICK/KELLY MATTEUCCI MOTION TO MODIFY PLAN  
MJA-1 7-1-15 [[25](#)]  
PATRICK MATTEUCCI/MV  
MICHAEL 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 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. The court will grant the motion and approve the modification of the plan.

17. [15-12243](#)-A-13 WILLIAM NILMEIER MOTION TO CONFIRM PLAN  
WSC-1 7-7-15 [[22](#)]  
WILLIAM NILMEIER/MV  
WILLIAM COLLIER/Atty. for dbt.  
WILLIAM NILMEIER/Atty. for mv.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

18. [14-13544](#)-A-13 ISELA TERAN CONTINUED MOTION FOR  
JES-2 COMPENSATION FOR JAMES E.  
JAMES SALVEN/MV SALVEN, CHAPTER 7 TRUSTEE(S)  
6-10-15 [[58](#)]  
THOMAS GILLIS/Atty. for dbt.

**No tentative ruling.**

19. [13-10447](#)-A-13 JARRED/OLIVIA PIGG MOTION TO DISMISS CASE  
MHM-2 7-8-15 [[118](#)]  
MICHAEL MEYER/MV  
PETER FEAR/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

20. [13-11651](#)-A-13 STEPHANIE VALDEZ-GARCIA MOTION TO DISMISS CASE  
MHM-4 7-8-15 [[86](#)]  
MICHAEL MEYER/MV  
JERRY LOWE/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

21. [15-12452](#)-A-13 JESUS PEREZ AND CAROLINA OBJECTION TO CONFIRMATION OF  
MHM-1 ARCEO PLAN BY TRUSTEE MICHAEL H.  
MEYER  
7-31-15 [[16](#)]  
THOMAS GILLIS/Atty. for dbt.

**Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); non-opposition filed

**Disposition:** Sustained

**Order:** Civil minute order

**LIQUIDATION TEST**

The trustee objects to confirmation on the ground that the plan does not meet the liquidation test under 11 U.S.C. § 1325(a)(4). Currently the plan pays 18% to unsecured creditors. The trustee asserts that the debtors transferred a vehicle in February 2015. The petition was filed June 20, 2015. The trustee asserts that this transfer was fraudulent given that no value was received by the debtors in exchange

for such transfer. The loan on the vehicle had been paid in full and the vehicle's value was \$8000 at the time of the transfer.

The trustee adds the \$8000 value of the vehicle to the other nonexempt assets of the debtor totaling \$8633. The trustee's calculation is that the debtors' total nonexempt assets equal \$16,633 and that after accounting for chapter 7 trustee's fees, unsecured creditors would receive approximately \$14,219.70 or 28.86%.

The debtors have filed a non-opposition and stated their intent to file an amended plan that addresses the issues of the trustee. The court will accept the trustee's factual assertions as true and sustain the objection.

#### **75-DAY ORDER**

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

#### **CIVIL MINUTE ORDER**

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having reviewed the objection and the debtors' non-opposition to the relief sought by the objection,

IT IS ORDERED that the objection is sustained and plan confirmation is denied without prejudice.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

22. [12-19355](#)-A-13 PHELIX SELLERS  
MHM-2  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
7-8-15 [[40](#)]

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

23. [10-64563](#)-A-13 LOREN/STACIE AFFONSO MOTION TO DISMISS CASE  
MHM-1 7-7-15 [[37](#)]  
MICHAEL MEYER/MV  
CHRISTIE LEE/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 \$5182.45.

**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 \$5182.45. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

24. [14-15265](#)-A-13 DANIEL/ERICA DE LA CERDA MOTION TO DISMISS CASE  
MHM-1 7-15-15 [[52](#)]  
MICHAEL MEYER/MV  
STEPHEN LABIAK/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

25. [15-11376](#)-A-13 SOFIA REYNOZO  
GEG-2  
SOFIA REYNOZO/MV  
GLEN GATES/Atty. for dbt.  
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF NICHOLAS  
FLORES, CLAIM NUMBER 3  
6-30-15 [[39](#)]

### **Tentative Ruling**

**Objection:** Objection to Claim of Nicholas Flores

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

Preliminarily, the court identifies the following disputed, material factual issues: (i) whether the claimant, Nicholas Flores, and the debtor entered into valid loan agreements under which the debtor made legally enforceable promises to pay such loans; (ii) whether the notes are secured by valid and legally enforceable deeds of trust; (iii) whether the debtor has defenses to enforcement of the contract; (vi) if the loan documents and any notes signed by the debtor are legally enforceable, then whether the present amount of loan debt outstanding is as stated by the claimant or as stated by the debtor; and (vii) if no legally enforceable contracts existed, whether the debtor has received the benefit of money from the creditor which she is legally obligated to repay in whole or in part (e.g., under equitable theories such as quantum meruit or quasi contract).

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

26. [15-11376](#)-A-13 SOFIA REYNOZO  
MHM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
7-31-15 [[45](#)]

GLEN GATES/Atty. for dbt.

**No tentative ruling.**

27. [11-17782](#)-A-13 RAMIL/MARIZA DAVID  
MHM-2  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE  
7-8-15 [[57](#)]

**Tentative Ruling**

**Motion:** Dismiss Chapter 13 Case

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

**Disposition:** Continued to October 22, 2015, at 9:00 a.m.

**Order:** Civil minute order if appropriate

The court notes that service on one of the joint debtors has not been sufficiently made. Joint-debtor Ramil David signed a change of address and filed it on August 2, 2013. This document changes only his address to 1864 W. Westfield, Porterville CA 93257. However, both debtors were served at 1864 W Westfield, Porterville, CA 93257, the address shown on the change of address form filed by Ramil David. But the petition shows that 1863 W. Westfield, Porterville, CA is the proper address for Mariza David. The court will continue the hearing to October 22, 2015, at 9:00 a.m. to allow proper service on joint debtor Mariza David no later than 42 days in advance of the continued hearing date.

28. [11-16885](#)-A-13 DAVID/DELIA HAYES  
BCS-5

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FISHMAN, LARSEN &  
CALLISTER FOR BENJAMIN C.  
SHEIN, DEBTORS ATTORNEY(S)  
7-17-15 [[107](#)]

DISMISSED  
RESPONSIVE PLEADING

**No tentative ruling.**

29. [11-61987](#)-A-13 JOSE/LETICIA CERDA MOTION TO DISMISS CASE  
MHM-2 7-8-15 [[69](#)]  
MICHAEL MEYER/MV  
ADRIAN WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

30. [15-12091](#)-A-13 MARICELA NIEBLAS ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-30-15 [[46](#)]  
FRANCISCO ALDANA/Atty. for dbt.

**Final Ruling**

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

31. [15-12091](#)-A-13 MARICELA NIEBLAS MOTION TO DISMISS CASE  
MHM-1 7-20-15 [[35](#)]  
MICHAEL MEYER/MV  
FRANCISCO ALDANA/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

**CASE DISMISSAL**

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

In addition, the debtor's credit counseling certificate shows that the credit counseling requirement was not met within the 180-day period before the petition date. 11 U.S.C. § 109(h)(1). Credit counseling was received June 1, 2015. The case was filed May 26, 2015. 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 and for failure to timely complete the credit counseling requirement prepetition. The court hereby dismisses this case.

32. [15-12091](#)-A-13 MARICELA NIEBLAS  
SAS-1  
PAN AMERICAN BANK/MV  
FRANCISCO ALDANA/Atty. for dbt.  
STEVEN SILVER/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY PAN AMERICAN BANK  
8-12-15 [[51](#)]

### **Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Overruled as moot

**Order:** Civil minute order

The court has ruled that the case should be dismissed. The objection will be overruled as moot.

Furthermore, even if the case had not been dismissed, the objection was not timely filed. Pursuant to the court's Local Rules and the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines, ECF No. 23, the last date to file an objection to confirmation of the plan was July 21, 2015. The objection was filed on August 12, 2015.

33. [14-14793](#)-A-13 PATRICIA ZUNIGA  
JES-3  
JAMES SALVEN/MV

CONTINUED MOTION FOR  
COMPENSATION FOR JAMES E.  
SALVEN, CHAPTER 7 TRUSTEE(S)  
6-10-15 [[110](#)]

SCOTT LYONS/Atty. for dbt.

### **Final Ruling**

**Application:** Allowance of Final Compensation to a Former Chapter 7 Trustee

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

**Disposition:** Approved

**Order:** Prepared by applicant

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, applicant James E. Salven was the former Chapter 7 trustee in this case before it was converted to a case under Chapter 13. The applicant has applied for an allowance of compensation of \$2250.00 and reimbursement of expenses in the amount of \$132.70, for a total of \$2382.70.

Chapter 7 trustees are entitled to compensation for their work in a case under Chapter 7 that is converted to a case under Chapter 13. *In re Hages*, 252 B.R. 789, 794-95, 797-99 (Bankr. N.D. Cal. 2000). Subject to the statutory cap of § 326(a) of the Bankruptcy Code, *id.* at 795, "a chapter 7 trustee's compensation should be determined independently under § 330," *id.* at 798. Section 330 authorizes "reasonable compensation for actual, necessary services." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). Such amount is paid pro rata with other administrative expenses out of each distribution made by the Chapter 13 trustee. *See id.* §§ 503(b)(2), 507(a)(2), 1322(a)(2), 1326(b)(1).

In addition, "it is entirely appropriate to impute the moneys that will be distributed by the chapter 13 trustee to the chapter 7 trustee for purposes of computing the maximum fee the chapter 7 trustee can charge, and allowing interim fees up to that maximum." *In re Hages*, 252 B.R. at 794. The amount of anticipated plan payments, rather than actual plan payments, may be used as the basis for calculating the maximum trustee's fee under § 326(a). *Id.* at 793-94.

The court finds that the compensation and expenses sought in the aggregate amount of \$2382.70 are reasonable and within the cap of § 326(a). As a result, the court will approve the compensation and expenses 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.

James E. Salven's application for allowance of 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 to the trustee compensation and reimbursement of expenses in the aggregate amount of \$2382.70.

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 and § 1326(b)(3) of the Bankruptcy Code.

34. [14-14793](#)-A-13 PATRICIA ZUNIGA  
MHM-1  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
WITHDRAWN

MOTION TO DISMISS CASE  
7-15-15 [[117](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.