

**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: AUGUST 25, 2016
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [16-12101](#)-A-13 RAUL GUTIERREZ MOTION TO DISMISS CASE
MHM-1 7-28-16 [[23](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [11-16604](#)-A-13 ROBERT/MARTHA PARAMO OBJECTION TO CLAIM OF SUNTRUST
MHM-1 MORTGAGE, INC., CLAIM NUMBER 9
MICHAEL MEYER/MV 7-7-16 [[47](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b) (1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 claimant, SunTrust Mortgage, Inc., has returned funds to the trustee on more than one occasion. It has stated that the loan was charged off on September 30, 2015 and now has a \$0.00 balance. For the reasons stated in the objection, the claim of Suntrust Mortgage, Inc., Claim No. 9, will be allowed in the amount of \$883.37, which is the amount the trustee has paid to SunTrust Mortgage, Inc., and the balance of the claim will be disallowed.

3. [16-11906](#)-A-13 DANIEL/STACY BAGHDANOV MOTION TO DISMISS CASE
MHM-1 7-25-16 [[24](#)]
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
OPPOSITION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [16-10107](#)-A-13 SANDRA RAMIREZ
SL-3
SANDRA RAMIREZ/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO SELL
8-1-16 [[30](#)]

No tentative ruling.

5. [15-13909](#)-A-13 THOMAS CSIBOR
FW-1

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
7-28-16 [[22](#)]

PETER FEAR/Atty. for dbt.

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved in part, disapproved in part

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 Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$6361.00 and reimbursement of expenses in the amount of \$334.15.

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 application requests allowance of \$1890.00 in fees for preparation of the present fee application. The time spent preparing the application is 10 hours. The court finds this somewhat excessive and unreasonable for three reasons. First, three attorneys were involved in working on the fee application in this chapter 13 case. Second, the fees requested for preparation of the fee application equal 28% of the total amount requested in the fee application, and approximately 21.7% of the total fees and costs billed so far in this case. Third, the fee application relies on a form (Fee Appl. EDC Fresno (Version 1.02 July 29, 2013)), and such a form should ordinarily create efficiencies in preparation based on the use of such a form.

In all other respects, the fee application provides good detail, however, and provides a helpful narrative to support review. It appears sufficient and complete.

The court will offer counsel for the debtor two alternative options. The first option is that the court will disapprove this application in part, reducing only the fees requested for the preparation of the fee application and approving the remainder of the fees. The court will approve the application with a reduction of 40% of the \$1890 requested for preparation of the fee application. As a result, only \$1134 in fees will be approved for the work preparing the fee application. And the total amount approved in fees and costs will be \$5939.15.

The second option is that the court will continue the hearing and allow the applicant to supplement the record to defend the amount requested for preparing the fee application. (But time spent defending the application would not be considered compensable time.)

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 Waddell, P.C.'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 \$5605.00 and reimbursement of expenses in the amount of \$334.15. The aggregate allowed amount equals \$5939.15. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$6695.15 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.

6. [15-14514](#)-A-13 BRIAN/MISTIE PRICE
MJA-2
BRIAN PRICE/MV
MICHAEL ARNOLD/Atty. for dbt.

MOTION TO MODIFY PLAN
7-5-16 [[24](#)]

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a) (5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

7. [16-12716](#)-A-13 ARTEM/ANNA PETROSYAN
PBB-1
ARTEM PETROSYAN/MV
PETER BUNTING/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
8-2-16 [[12](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c) (3) (B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.*

(emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

8. [12-10318](#)-A-13 JAQUETTA WORTH MOTION TO MODIFY PLAN
SAH-10 6-27-16 [[170](#)]
JAQUETTA WORTH/MV
SUSAN HEMB/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a) (5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

9. [16-12522](#)-A-13 MICHAEL/TAMMY MUNOZ MOTION TO VALUE COLLATERAL OF
GMA-1 GM FINANCIAL
MICHAEL MUNOZ/MV 7-18-16 [[10](#)]
GEOFFREY ADALIAN/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 2012 GMC Terrain SLE Sport. 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 \$15,271.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2012 GMC Terrain SLE Sport has a value of \$15,271. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$15,271 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.

10. [16-11924](#)-A-13 MARIA JACOBO
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

MOTION TO DISMISS CASE
7-14-16 [[17](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [16-11025](#)-A-13 TIM/CHERIE WILKINS
FW-1
TIM WILKINS/MV
PETER FEAR/Atty. for dbt.
OPPOSITION

MOTION TO CONFIRM PLAN
7-5-16 [[67](#)]

No tentative ruling.

12. [16-11025](#)-A-13 TIM/CHERIE WILKINS
MHM-2
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
OPPOSITION
WITHDRAWN

MOTION TO DISMISS CASE
7-15-16 [[87](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [14-11329](#)-A-13 ROY SALAZAR
RLF-2
ROY SALAZAR/MV
JEFF REICH/Atty. for dbt.
OPPOSITION

CONTINUED MOTION TO MODIFY PLAN
5-25-16 [[62](#)]

No tentative ruling.

14. [16-12129](#)-A-13 ROBERTO MERAS
MHM-1
MICHAEL MEYER/MV
JAMIL WHITE/Atty. for dbt.
OPPOSITION

MOTION TO DISMISS CASE
7-27-16 [[24](#)]

No tentative ruling.

15. [16-12134](#)-B-13 NIGEL MARIN
MHM-1
MICHAEL MEYER/MV
ORDER #39 TRANSFERRING TO
DEPT B

MOTION TO DISMISS CASE
7-28-16 [[31](#)]

Final Ruling

Pursuant to Order, ECF #39, the hearing has been rescheduled to August 25, 2016, at 1:30 before The Honorable Rene Lastreto II in Courtroom 13, Department B, 2500 Tulare Street, Fresno, California.

16. [16-10435](#)-A-13 JOHN MUNOZ
MAZ-2
JOHN MUNOZ/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO CONFIRM PLAN
6-28-16 [[37](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

17. [16-12136](#)-A-13 JEANETTE TENA
APN-1
FORD MOTOR CREDIT COMPANY/MV

TIMOTHY SPRINGER/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY FORD MOTOR CREDIT
COMPANY
8-1-16 [[26](#)]

No tentative ruling.

18. [16-12136](#)-A-13 JEANETTE TENA MOTION TO DISMISS CASE
MHM-1 7-28-16 [[20](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [16-12437](#)-A-13 GURMIT SANDHU AND KARMIT MOTION TO VALUE COLLATERAL OF
GEG-1 BRAR TRANSPORT FUNDING LLC
GURMIT SANDHU/MV 7-22-16 [[9](#)]
GLEN GATES/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 cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, 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. (For example, to show that the hanging paragraph does not apply, the motion need only show that the debt was not incurred within the 910-day period preceding the

petition, or that the creditor does not hold a purchase money security interest in the collateral.)

20. [16-12040](#)-A-13 JIM ARIAS AND STEPHANIE MOTION TO DISMISS CASE
MHM-1 BUTTICCI 7-14-16 [[16](#)]
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).

CASE DISMISSAL

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

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

21. [16-12041](#)-A-13 JOHN SPIGARELLI
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
7-29-16 [[25](#)]

Tentative Ruling

Motion: Dismiss Case

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). 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). These documents include the Class 1 Mortgage Checklist with payment coupon or last statement, 2014 State and Federal tax return, proof of all income (i.e. pay advices, profit and loss statements, rental income, unemployment income).

The debtors have failed to provide credit counseling certificates. With exceptions not applicable here, an individual cannot be a debtor under Title 11 unless such individual has received credit counseling as prescribed by § 109(h)(1). Credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

26. [16-12149](#)-A-13 IRMA CASTRO
MHM-1
PETER BUNTING/Atty. for dbt.
WITHDRAWN

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
7-27-16 [[20](#)]

Final Ruling

The objection withdrawn, the matter is dropped as moot.

27. [15-13653](#)-A-13 BRADLEY JAURIQUE
JRL-6
BRADLEY JAURIQUE/MV
JERRY LOWE/Atty. for dbt.

MOTION TO MODIFY PLAN
7-6-16 [[113](#)]

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

28. [16-10767](#)-A-13 GILBERT/MARY ONTIVEROS
SL-1
GILBERT ONTIVEROS/MV
SCOTT LYONS/Atty. for dbt.
OPPOSITION

CONTINUED MOTION TO CONFIRM
PLAN
6-2-16 [[24](#)]

No tentative ruling.

29. [11-12374](#)-A-13 LAWRENCE/KRISTEN NORMAN OBJECTION TO CLAIM OF U.S. BANK
MHM-1 N.A., CLAIM NUMBER 10
MICHAEL MEYER/MV 7-8-16 [[50](#)]
THOMAS ARMSTRONG/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b) (1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 claimant, U.S. Bank, N.A., has returned funds to the trustee on more than one occasion. It has stated in two different letters that the account is overpaid. By inference, the account has been paid in full. The claim shall be allowed in the amount of \$10,964.59.

30. [14-15882](#)-A-13 DELIA GALLARDO MOTION TO MODIFY PLAN
JDR-4 7-12-16 [[82](#)]
DELIA GALLARDO/MV
JEFFREY ROWE/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a) (5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

31. [16-10790](#)-A-13 JOSE/MARIA CASILLAS MOTION TO CONFIRM PLAN
ALG-1 6-29-16 [[35](#)]
JOSE CASILLAS/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 the trustee, approved by debtor's counsel

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

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

32. [13-11097](#)-A-13 CHAD/ELIZABETH PATTON MOTION TO SELL
SL-3 8-1-16 [[40](#)]
CHAD PATTON/MV
STEPHEN LABIAK/Atty. for dbt.

No tentative ruling.

33. [13-11097](#)-A-13 CHAD/ELIZABETH PATTON MOTION TO INCUR DEBT
SL-4 8-1-16 [[47](#)]
CHAD PATTON/MV
STEPHEN LABIAK/Atty. for dbt.

Tentative Ruling

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

Notice: LBR 9014-1(f) (2); 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).

The debtor seeks to incur new debt to finance the purchase of a vehicle. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest (\$381.00) that would result from obtaining this financing.

The debtors are also authorized to pay a cash amount sufficient to cover the difference between the financed amount and the cash price, up to the amount of the total cash price shown on the retail installment sale contract. The court will grant the motion, and the trustee will approve the order as to form and content.

34. [16-10698](#)-A-13 MATTHEW/DEBORAH EVANS MOTION TO CONFIRM PLAN
TCS-1 7-14-16 [[25](#)]
MATTHEW EVANS/MV
TIMOTHY SPRINGER/Atty. for dbt.
OPPOSITION

No tentative ruling.

35. [16-12713](#)-A-13 JASON ATHERTON AND MOTION TO EXTEND AUTOMATIC STAY
TCS-1 GENZZIA DOVIGI-ATHERTON 8-9-16 [[8](#)]
JASON ATHERTON/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c) (3) (B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the

creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

36. [16-12041](#)-A-13 JOHN SPIGARELLI
EMM-1
VENTURES TRUST 2013-1-H-R/MV
ERIN MCCARTNEY/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY VENTURES TRUST
2013-1-H-R
8-9-16 [[31](#)]

Tentative Ruling

The case having been dismissed, the objection is overruled as moot.

37. [16-11955](#)-A-13 REYNALDO ARCINO
SL-1
REYNALDO ARCINO/MV
SCOTT LYONS/Atty. for dbt.
- MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK N.A.
8-9-16 [[22](#)]

No tentative ruling.