

**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: WEDNESDAY
DATE: SEPTEMBER 21, 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. [15-13701](#)-A-13 KEVIN GERHARDT
FW-1

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
8-23-16 [[119](#)]

GABRIEL WADDELL/Atty. for dbt.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear 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 \$19,168.50 and reimbursement of expenses in the amount of \$187.36.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

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

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

Fear 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 \$19,168.50 and

reimbursement of expenses in the amount of \$187.36. The aggregate allowed amount equals \$19,355.86. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$19,355.86 shall be allowed as an administrative expense to be paid through the plan. 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.

2. [16-12602](#)-A-13 ROBERT SORENSEN
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
8-26-16 [[20](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

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

The debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court.

Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

3. [16-12602](#)-A-13 ROBERT SORENSEN
RAS-1
CHAMPION MORTGAGE COMPANY/MV
MATTHEW CLARK/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY CHAMPION MORTGAGE
COMPANY
8-9-16 [[13](#)]

No tentative ruling.

4. [15-13105](#)-A-13 PILAR/JESSICA PENA
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
- MOTION TO DISMISS CASE
8-10-16 [[23](#)]

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 \$6980.

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

5. [16-11905](#)-A-13 FRED/MARIA MORENO

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-29-16 [[29](#)]

JAMES MILLER/Atty. for dbt.
FEE PAID \$80.00

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.

6. [16-11906](#)-A-13 DANIEL/STACY BAGHDANOV
HDN-2
DANIEL BAGHDANOV/MV
HENRY NUNEZ/Atty. for dbt.

MOTION TO CONFIRM PLAN
8-4-16 [[28](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

7. [13-17007](#)-A-13 DANNY/LORI CARRELL CONTINUED MOTION TO DISMISS
MHM-5 CASE
MICHAEL MEYER/MV 6-16-16 [[120](#)]
GEOFFREY ADALIAN/Atty. for dbt.

No tentative ruling.

8. [16-10407](#)-A-13 RAFAEL/MARTHA HERNANDEZ MOTION TO DISMISS CASE
MHM-1 8-10-16 [[14](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [15-14410](#)-A-13 JESSE LOPEZ MOTION TO DISMISS CASE
MHM-3 8-10-16 [[76](#)]
MICHAEL MEYER/MV
JOEL WINTER/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 \$1717.

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

10. [15-12611](#)-A-13 RAYMOND MARTINEZ MOTION TO DISMISS CASE
MHM-1 8-10-16 [[29](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [15-14711](#)-A-13 ANDREA SOUSA MOTION TO DISMISS CASE
MHM-3 8-10-16 [[78](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

No tentative ruling.

12. [16-12611](#)-A-13 NATALIE ROBERTS ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-23-16 [[16](#)]
DAVID JENKINS/Atty. for dbt.

Tentative Ruling

If the installment fee of \$79 due 8/18/16 and the installment fee of \$77 due 9/19/16 have not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

13. [12-17618](#)-A-13 CHRISTINE BOBBITT MOTION TO MODIFY PLAN
PBB-2 8-11-16 [[55](#)]
CHRISTINE BOBBITT/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

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

14. [14-10218](#)-A-13 JESUS CASTELLANO AND MOTION TO MODIFY PLAN
JDW-5 ANGIE VEGA 8-7-16 [[54](#)]
JESUS CASTELLANO/MV
JOEL WINTER/Atty. for dbt.
OPPOSITION

No tentative ruling.

15. [16-10626](#)-A-13 RAMON GUTIERREZ AND CONTINUED MOTION TO DISMISS
MHM-2 MARGARITA AGUILERA CASE
MICHAEL MEYER/MV 6-30-16 [[32](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
MOTION WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [16-12326](#)-A-13 JOSE MARTINEZ AND MARIA MOTION TO DISMISS CASE
MHM-1 SARAVIA 8-16-16 [[19](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [16-12327](#)-A-13 GUSTAVO IBARRA MOTION TO DISMISS CASE
MHM-2 8-17-16 [[24](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [14-11329](#)-A-13 ROY SALAZAR CONTINUED MOTION TO MODIFY PLAN
RLF-2 5-25-16 [[62](#)]
ROY SALAZAR/MV
JEFF REICH/Atty. for dbt.
OPPOSITION

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.

19. [16-12129](#)-A-13 ROBERTO MERAS CONTINUED MOTION TO DISMISS
MHH-1 CASE
MICHAEL MEYER/MV 7-27-16 [[24](#)]
JAMIL WHITE/Atty. for dbt.
OPPOSITION, MOTION WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [16-10930](#)-A-13 ZERRICK MAYS MOTION TO DISMISS CASE
MHH-2 8-5-16 [[35](#)]
MICHAEL MEYER/MV
JOEL WINTER/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 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 \$3,279.68.

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.

21. [11-18132](#)-A-13 LINDA MANLEY
DRJ-1
LINDA MANLEY/MV
BRUCE NICKEL/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
8-8-16 [[67](#)]

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 2717 E. Michigan Ave., Fresno, CA.

The court values the collateral at \$100,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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).

DISCUSSION

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). A claim must be disallowed if it is unenforceable under applicable nonbankruptcy law. See 11 U.S.C. § 502(b)(1); accord *Diamant v. Kasparian (In re S. Cal. Plastics, Inc.)*, 165 F.3d 1243, 1247 (9th Cir. 1999). Once an objection is made, the court may liquidate the claim. *In re Lyngholm*, 24 F.3d 89, 92 (10th Cir. 1994).

Here, CitiFinancial Servicing, LLC has filed claim no. 3-1 in the amount of \$16,614.12 and amended proof of claim no. 3-2 in the amount of \$16,614.12. After having received \$1,103.55, the creditor has signaled the trustee that it no longer wishes to receive distributions under the plan. Accordingly, the amount of Claim No. 3-2, which amends Claim No. 3-1, is fixed at \$1,103.55 and disallowed as to all other amounts.

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.

Michael H. Meyer, Chapter 13 trustee's objection 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 objection,

IT IS ORDERED that the amount of Claim No. 3-2, which amends Claim No. 3-1, is fixed at \$1,103.55 and disallowed as to all other amounts.

25. [11-15739](#)-A-13 CHARLES OVERTON
MHM-1
MICHAEL MEYER/MV

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
8-10-16 [[89](#)]

PETER FEAR/Atty. for dbt.

Tentative Ruling

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

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

Disposition: Granted

Order: Prepared by moving party

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

RULE 3002.1(h)

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

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

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

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

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information,

in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bank. P. 3002.1(i).

LATE-FILED OPPOSITION / RESPONSE TO NOTICE OF FINAL CURE

Opposition is to be filed no later than 14 days prior to the hearing date. LBR 9014-1(f)(1). The notice of hearing similarly specified as follows: "Opposition, if any, to the Motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations."

The date that is 14 days prior to the hearing was September 7, 2016. A document, titled "Response to Notice of Final Cure Payment" was filed on September 12, 2016. This document is not entitled an opposition and does not meet the local rules' requirements for an opposition, i.e., it does not include evidence establishing its factual allegations as required by LBR 9014-1(f)(1)(B).

Although the response filed is signed under penalty of perjury, there is no indication that the person signing the form is a person with personal knowledge of the facts. Fed. R. Evid. 602, 1101; Fed. R. Bankr. P. 9017. In fact, the form has been signed by the attorney for the creditor. In addition, even if the response were an opposition, it is 5 days late.

Next, the Response to Notice of Final Cure attempts to address the trustee's Notice of Final Cure. See Tr.'s Mot. Determination of Final Cure ¶ 12, ECF No. 89. But this response was to be filed within 21 days after service of the Notice of Final Cure (see discussion below of Rule 3002.1).

Thus, the deadline for the response being filed and served is 7/8/16. The creditor's response, though, shows a filing date of 9/12/16. The proof of service attached also shows a service date of 9/12/2016. As a response to the Notice of Final Cure, the response is more than 2 months late. Accordingly, pursuant to Rule 3002.1(g), the court does not consider this to be a timely response that may be considered in its decision on this motion.

APPLICATION

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. The creditor filed and served a very late response to the Notice of Final Cure. Additionally, this response does not qualify as an opposition to the motion.

The court will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion. The respondent is precluded from presenting, in any form, any information that could have been provided in its timely response under Rule 3002.1(g).

26. [16-12040](#)-A-13 JIM ARIAS AND STEPHANIE OBJECTION TO DEBTOR'S CLAIM OF
MHM-3 BUTTICCI EXEMPTIONS
MICHAEL MEYER/MV 8-15-16 [[28](#)]
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

The case dismissed, the objection is overruled as moot.

27. [16-12147](#)-A-13 ANTONIO/MARIA NAVARRO MOTION TO CONFIRM PLAN
MGG-4 8-8-16 [[46](#)]
ANTONIO NAVARRO/MV
MATTHEW GRECH/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.

28. [13-13051](#)-A-13 RALPH/REBECCA SALDANA MOTION FOR COMPENSATION FOR
BCS-6 BENJAMIN C. SHEIN, DEBTORS
ATTORNEY(S)
8-19-16 [[72](#)]
BENJAMIN SHEIN/Atty. for dbt.

Final Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Shein Law Group, PC has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3735.00 and reimbursement of expenses in the amount of \$951.76.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

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

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

Shein Law Group, PC's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3735.00 and reimbursement of expenses in the amount of \$951.76. The aggregate allowed amount equals \$4686.76. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4686.76 shall be allowed as an administrative expense to be paid through the plan. 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.

29. [15-13151](#)-A-13 PAUL/CARRIE COLVIN MOTION TO DISMISS CASE
MHM-2 8-10-16 [[39](#)]
MICHAEL MEYER/MV
MARK ZIMMERMAN/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 \$7307.69.

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

30. [15-14451](#)-A-13 GREGORY LOPEZ MOTION TO DISMISS CASE
MHM-1 8-10-16 [[33](#)]
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.

No tentative ruling.

31. [16-11951](#)-A-13 JOSE RAMIREZ
MHM-2
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.

MOTION TO DISMISS CASE
8-16-16 [[40](#)]

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 \$1837.00.

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.

32. [16-11951](#)-A-13 JOSE RAMIREZ
TJS-1
CFAM FINANCIAL SERVICES,
LLC/MV
HENRY NUNEZ/Atty. for dbt.
TIMOTHY SILVERMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-16-16 [[31](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2008 Ford F250

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).

In this chapter 13 case, the plan has not yet been confirmed. The plan, moreover, does not provide for the claim or the collateral of the movant.

The movant seeks relief as to personal property described above. The debtor has defaulted on the loan secured by such personal property. The debtor has not made payments to the movant pursuant to the terms of the parties' contract.

Section 362(d) (1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d) (1). Cause exists to grant relief under § 362(d) (1).

Alternatively, because the plan which has not been confirmed does not provide for the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. Additionally, the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d) (2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

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

The chapter 13 trustee's objection to claim 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 objection,

IT IS ORDERED that the objection is sustained. Claim No. 4-2 will be allowed as (1) a secured claim in the amount of \$23,734.54 of principal and \$2217.97 of interest and (2) an unsecured claim in the amount of \$88.91. The balance of the claim will be disallowed.

34. [16-10253](#)-A-13 JOE PEREZ
MHM-3
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO DISMISS CASE
8-11-16 [[150](#)]

Tentative Ruling

Motion: Dismiss Case

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

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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 7.5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors.

The debtor's opposition only addresses one ground for dismissal—delinquent payments, which the debtor concedes. The ground for dismissal involving unreasonable delay in confirming a plan has not been addressed. The court will dismiss the case.

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 considered the motion, and the papers

filed in opposition, and having heard any oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.

35. [12-60054](#)-A-7 DWIGHT/NELLIE LONG CONTINUED PRE-TRIAL CONFERENCE
JLG-3 RE: OBJECTION TO CLAIM OF
GROSS MORTGAGE CORPORATION/MV ERNSTER LAW OFFICES: JOHN H.
ERNSTER, CLAIM NUMBER 13
5-12-16 [[303](#)]
- LAYNE HAYDEN/Atty. for dbt.
HANNO POWELL/Atty. for mv.
SPECIALLY SET, ORDER, ECF
NO. 382
OBJECTION WITHDRAWN 9/16/16

Final Ruling

The objection withdrawn, the matter is dropped as moot.

36. [16-10356](#)-A-13 KENNETH/AMANDA WOOD MOTION TO DISMISS CASE
MHM-3 8-10-16 [[34](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
OPPOSITION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

37. [16-11256](#)-A-13 SAMUEL/DIANE DOMINGUEZ PRETRIAL CONFERENCE RE:
JLW-4 OBJECTION TO CONFIRMATION OF
ROBERT LAIRD/MV PLAN BY ROBERT STEVEN LAIRD AND
MIRJAM RIJFKOGEL-LAIRD
5-31-16 [[44](#)]
- PETER FEAR/Atty. for dbt.
JODY WINTER/Atty. for mv.

No tentative ruling.

38. [15-13960](#)-A-13 JAMES BARR MOTION TO DISMISS CASE
MHM-2 8-10-16 [[55](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
OPPOSITION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [16-12161](#)-A-13 RODNEY/PATRICIA PARKER ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-22-16 [[30](#)]
SCOTT LYONS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged as moot.

40. [14-13962](#)-A-13 JORGE GOMEZ AND MARIA MOTION TO INCUR DEBT
BSH-4 TOVAR DE GOMEZ 8-16-16 [[72](#)]
JORGE GOMEZ/MV
BRIAN HADDIX/Atty. for dbt.

Final Ruling

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

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

Disposition: Granted

Order: Prepared by moving party

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

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 that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

41. [12-17270](#)-A-12 ANTONIO/IRENE CABRAL MOTION FOR ENTRY OF DISCHARGE
FW-6 8-24-16 [[60](#)]
ANTONIO CABRAL/MV
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Entry of Discharge under § 1228

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

Disposition: Granted

Order: Prepared by the movant 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).

For the reasons stated in the motion and declaration, the debtors are entitled to a chapter 12 discharge under § 1228. The discharge order shall be prepared consistent with § 1228 and shall be submitted no later than September 23, 2016, so that it may be entered less than 10 days after the hearing.

42. [16-11871](#)-A-13 NELLIE YOUNG ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-29-16 [[18](#)]
JAMES MILLER/Atty. for dbt.
FEE PAID \$77.00

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.

43. [14-13974](#)-A-13 FERNANDO POO AND PALOMA MOTION TO DISMISS CASE
CDR-1 HERNANDEZ 8-17-16 [[77](#)]
CALIFORNIA FRANCHISE TAX
BOARD/MV
THOMAS GILLIS/Atty. for dbt.
CRAIG RUST/Atty. for mv.
WITHDRAWN, PURSUANT TO ORDER
ECF NO. 89

Final Ruling

This matter has been resolved by stipulation and an order approving the stipulation. The matter is dropped from calendar.

44. [16-11576](#)-A-13 SCOTT KIRK
PK-4

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
8-22-16 [[94](#)]

PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f) (2); no 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). 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, Patrick Kavanagh has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5000 and reimbursement of expenses in the amount of \$0.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

Patrick Kavanagh'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 \$5000 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$5000, which includes a retainer paid for prepetition services in the amount of \$1090. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3910 shall be allowed as an administrative expense to be paid through the plan by the trustee or the debtor directly.

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.

45. [15-13077](#)-A-13 ANTONIO/MARIA ROMERO MOTION TO DISMISS CASE
MHM-3 8-10-16 [[57](#)]
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 \$831.58.

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

46. [16-11885](#)-A-12 ANTONIO/MARIA TEIXEIRA MOTION TO CONFIRM CHAPTER 12
FW-3 PLAN
MARIA TEIXEIRA/MV 8-31-16 [[26](#)]
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 12 Plan

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

Disposition: Granted

Order: Prepared by debtors' counsel, approved by the trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 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 12 plan confirmation is governed by 11 U.S.C. §§ 1222, 1225, 1227 and by Federal Rule of Bankruptcy Procedure 2002(a) (8). The debtor bears the burden of proof as to each element. See *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994) (a chapter 13 case applicable by analogy). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

47. [13-11486](#)-A-13 MANUEL/MARIA DIAS OBJECTION TO CLAIM OF U.S.
MHM-2 BANK, N.A., CLAIM NUMBER 2
MICHAEL MEYER/MV 7-26-16 [[69](#)]
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Objection: Objection to Claim No. 2

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

Disposition: Sustained

Order: Civil minute order

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).

DISCUSSION

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). A claim must be disallowed if it is unenforceable under applicable nonbankruptcy

law. See 11 U.S.C. § 502(b)(1); accord *Diamant v. Kasparian (In re S. Cal. Plastics, Inc.)*, 165 F.3d 1243, 1247 (9th Cir. 1999).

If properly executed and filed under the rules along with all supporting documentation that may be required, see, e.g., Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. See Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

The respondent and claimant U.S. Bank, N.A., has returned funds paid to it by the trustee. In addition, it has communicated to the trustee in writing that the account has been overpaid. But until an objection to the claim is brought, the claim remains allowed and must be paid by the trustee. § 502(a).

By its return of funds and written statements, the claimant has waived its right to receipt of any further amounts on its claim. This creates an impossibility for the trustee to pay the allowed claim given the claimant's refusal to accept the funds paid by the trustee.

Given the claimant's waiver of its right to receive the full amount of its claim, the court will liquidate the amount of the claim at the amount paid by the trustee to the claimant. The claim will be allowed as a secured claim in the amount of \$11,720.27 of principal and \$775.30 of interest. The remaining balance of the claim will be disallowed.

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

IT IS ORDERED that the objection to Claim No. 2 held by U.S. Bank, N.A. is sustained. The court fixes the amount of the claim at the amount paid by the trustee on the claim. The claim will be allowed as a secured claim in the amount of \$11,720.27 of principal and \$775.30 of interest. The remaining balance of the claim will be disallowed.

48. [15-13096](#)-A-13 CRYSTAL MONROY CERVANTES MOTION TO DISMISS CASE
MHM-3 8-10-16 [\[79\]](#)
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.

No tentative ruling.

49. [16-10697](#)-A-13 DARCY NUNES
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

MOTION TO DISMISS CASE
8-10-16 [[14](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

50. [16-13097](#)-A-13 JOYCE LEHR
SL-1
JOYCE LEHR/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
9-1-16 [[8](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

The notice of hearing originally filed contained an incorrect hearing date. Although an amended notice of hearing was filed, no proof of service shows that this amended notice was sent to respondent creditors. No proof of service shows, moreover, that the second amended notice of hearing was transmitted to respondent creditors. Because creditors do not have notice of the correct hearing date, due process has not been satisfied given that creditors have not received "notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Creditors will be unable to present their objections at a hearing of which they have no notice.

51. [16-11842](#)-A-13 FRANK/STEPHANIE HERNANDEZ MOTION TO INCUR DEBT
SL-1 9-7-16 [[25](#)]
FRANK HERNANDEZ/MV
SCOTT LYONS/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 that would result from obtaining this financing. Even though the amended Schedule J does not show the car payment proposed, it does show that the debtors have disposable income exceeding their plan payment by approximately \$486, which is more than the proposed car loan payment of 456.49 per month. The court will grant the motion, and the trustee will approve the order as to form and content.