

**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: TUESDAY
DATE: NOVEMBER 12, 2019
CALENDAR: 3:00 P.M. CHAPTERS 13 AND 12 CASES

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

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

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

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

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

1. [19-10803](#)-A-13 **IN RE: CHRISTY BEELER**
[TCS-1](#)

MOTION TO MODIFY PLAN
10-4-2019 [[22](#)]

CHRISTY BEELER/MV
TIMOTHY SPRINGER

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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

2. [19-13605](#)-A-13 **IN RE: JOANN FRAIRE**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND
SOCIETY, FSB
10-15-2019 [[19](#)]

WILMINGTON SAVINGS FUND
SOCIETY, FSB/MV
RICHARD STURDEVANT
WENDY LOCKE/ATTY. FOR MV.

No Ruling.

3. [19-11009](#)-A-13 **IN RE: KEVIN/TAMEKA BLUEBAUGH**
[DMG-3](#)

RESCHEDULED HEARING RE: MOTION TO CONFIRM PLAN
9-17-2019 [[76](#)]

KEVIN BLUEBAUGH/MV
D. GARDNER

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

4. [19-14114](#)-A-13 **IN RE: SAMUEL CUEVAS**
[RSW-2](#)

MOTION TO SELL
10-22-2019 [[13](#)]

SAMUEL CUEVAS/MV
ROBERT WILLIAMS

Final Ruling.

This case having been dismissed, the court will deny the motion as moot.

5. [19-13924](#)-A-13 **IN RE: ROBERT/DARLENE AGUINAGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-22-2019 [[16](#)]

MARK ZIMMERMAN

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

6. [19-12626](#)-A-13 **IN RE: FILIMON RAMIREZ**
[EPE-1](#)

MOTION TO CONFIRM PLAN
9-24-2019 [[25](#)]

FILIMON RAMIREZ/MV
ERIC ESCAMILLA
RESPONSIVE PLEADING

Final Ruling.

This motion having been withdrawn, the court will deny the motion as moot.

7. [19-13326](#)-A-13 **IN RE: RICARDO/JESSICA MONTANO**
[MHM-1](#)

MOTION TO DISMISS CASE
10-9-2019 [[28](#)]

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

8. [16-12630](#)-A-13 **IN RE: ROGELIO/BETTY TRUJILLO**
[JRL-6](#)

MOTION TO REFINANCE AND/OR MOTION TO INCUR DEBT
10-28-2019 [[73](#)]

ROGELIO TRUJILLO/MV
JERRY LOWE

Tentative Ruling

Motion: Approve New Debt [Refinance Mortgage 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 refinance an existing mortgage loan. 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 approve the debtor's incurring of this new debt.

9. [19-12931](#)-A-13 **IN RE: JOHN NEUFIELD**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-15-2019 [[41](#)]

DISMISSED 10/23/19

Final Ruling

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

10. [19-13238](#)-A-13 **IN RE: HENRY/KRISTI GARCIA**
[MHM-1](#)

RESCHEDULED HEARING RE: MOTION TO DISMISS CASE
9-18-2019 [[19](#)]

MICHAEL MEYER/MV
JULIE MORADI-LOPES
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

11. [19-13550](#)-A-13 **IN RE: JOEL/KIM SCHOLAR**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON TRUST,
NATIONAL ASSOCIATION
9-24-2019 [[25](#)]

WILMINGTON TRUST, NATIONAL
ASSOCIATION/MV
DARLENE VIGIL/ATTY. FOR MV.

Final Ruling

The case having been dismissed, the objection will be denied as moot.

12. [19-13550](#)-A-13 **IN RE: JOEL/KIM SCHOLAR**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
10-10-2019 [[28](#)]

Final Ruling

The case having been dismissed, the objection will be denied as moot.

13. [19-13550](#)-A-13 **IN RE: JOEL/KIM SCHOLAR**
[MHM-2](#)

MOTION TO DISMISS CASE
10-10-2019 [[31](#)]

MICHAEL MEYER/MV

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 debtors have failed to provide a credit counseling certificate showing that the debtor received the required credit counseling within the 180-day period preceding the petition date. 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). And credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

The debtors have not filed any counseling certificates, and have failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343. Debtor is required to submit those documents, attend the meeting of creditors, and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521.

The debtors' plan does not propose to pay any creditors. Their Schedules H, A/B, C, and Statement of Financial Affairs are incomplete.

Trustee also stated that payments under the proposed plan are delinquent in the amount of \$1,800.00 as of 10/10/19.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). 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.

14. [19-13151](#)-A-13 **IN RE: KRISTIN VOOLSTRA**
[MHM-2](#)

MOTION TO DISMISS CASE
10-9-2019 [\[53\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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 \$1,242.00.

The debtor's opposition that \$1,242.00 will be paid prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$1,242.00.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

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.

15. [19-13352](#)-A-13 **IN RE: MARY ISLAS**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-30-2019 [[15](#)]

MICHAEL MEYER/MV
THOMAS MOORE

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(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 motion. 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).

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

Further, the preponderance-of-the-evidence standard applies. See *In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

The debtor has claimed an exemption of life insurance in the amount of \$100,000.00 under Cal. Civ. Proc. Code § 703.140(b)(11)(C). Under § 703.140(b)(11)(C), a debtor may claim as an exemption "a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."

The debtor has not demonstrated beyond a preponderance of evidence that Debtor was a dependent of an individual on the date of the individual's death and that the payment to Debtor under the individual's life insurance contract is reasonably necessary for support of Debtor and her dependents. Debtor has not failed any opposition to Trustee's objection.

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 objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained.

16. [19-13053](#)-A-13 **IN RE: BLANCA MARTINEZ**
[FW-1](#)

RESCHEDULED HEARING RE: MOTION TO CONFIRM PLAN
9-9-2019 [\[13\]](#)

BLANCA MARTINEZ/MV
GABRIEL WADDELL

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 Trustee, approved by debtor's counsel

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

17. [19-12455](#)-A-13 **IN RE: ANTONIO FRANCO AND SYLVIA VALENCIA**
[MHM-1](#)

MOTION TO DISMISS CASE
10-8-2019 [\[63\]](#)

MICHAEL MEYER/MV
PETER BUNTING

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 \$1,130.00.

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 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.

18. [19-12059](#)-A-13 **IN RE: JOHNNIE LOWERY AND HAZEL TURNER**
[MHM-2](#)

MOTION TO DISMISS CASE
10-8-2019 [[30](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling.

19. [19-12860](#)-A-13 **IN RE: MILISSA ONEY**
[MHM-2](#)

RESCHEDULED HEARING RE: MOTION TO DISMISS CASE
9-18-2019 [[26](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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 \$1,500.00.

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.

20. [15-13361](#)-A-13 **IN RE: ALTON/SUSAN CUMMINGS**
[PBB-9](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT,
WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, SUBSTITUTE
PARTY, AS TO DEBTOR
10-10-2019 [[102](#)]

SUSAN CUMMINGS/MV
PETER BUNTING

Final Ruling

Motion: Substitution of Representative, Waiver of Personal Financial Management and Waiver of Certifications

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).

Movant seeks waiver of education requirements, waiver of certification requirements for discharge of debt of deceased debtor, and for substitution of representative.

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been closed, a **Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor.** The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. **A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Here, Movant has served to all involved creditors, Trustee, and U.S. Trustee notice of Death of Debtor. ECF #97.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by Fed. R. Bankr. P. 7017, 9014(c)* (emphasis added).

Movant is decedent's wife, and has lived with decedent for 29 years. All of decedent's property, including decedent's residence and personal property, was acquired from earnings of the marriage.

Waiver of Post-Petition Education Requirement

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability,** or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **"disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

11 U.S.C.A. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4).

WAIVER OF § 1328 CERTIFICATIONS

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 court will 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.

CIVIL MINUTE ORDER

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

Susan Marie Cummings's motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted.

21. [19-12462](#)-A-13 **IN RE: ROBERT HAMPTON AND DEATRIA DAVIS**
[PBB-5](#)

MOTION TO VALUE COLLATERAL OF STATE OF CALIFORNIA,
EMPLOYMENT DEVELOPMENT DEPARTMENT
10-7-2019 [[63](#)]

ROBERT HAMPTON/MV
PETER BUNTING

No Ruling.

22. [19-12462](#)-A-13 **IN RE: ROBERT HAMPTON AND DEATRIA DAVIS**
[PBB-6](#)

MOTION TO VALUE COLLATERAL OF STATE OF CALIFORNIA,
EMPLOYMENT DEVELOPMENT DEPARTMENT
10-7-2019 [[68](#)]

ROBERT HAMPTON/MV
PETER BUNTING

No Ruling.

23. [18-13663](#)-A-13 **IN RE: ROUDNI/MELISSA HAROUN**
[JRL-1](#)

MOTION TO MODIFY PLAN
10-1-2019 [[26](#)]

ROUDNI HAROUN/MV
JERRY LOWE
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied without prejudice

Order: Civil minute order

Debtors filed with their Amended Notice of Motion to Confirm Modified Plan a Proof of Service that states, "See attached Service List" (ECF #33). There has been no attachment filed.

INSUFFICIENT NOTICE

All creditors and parties in interest have not received sufficient notice. The motion and supporting pleadings must be served on the Chapter 13 Trustee, creditors, and the U.S. Trustee, as required by Federal Rule of Bankruptcy Procedure 2002(a)(5).

The court finds that there has been insufficient service, and will deny applicant's motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's motion to modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion to modify the plan is denied without prejudice.

24. [19-13163](#)-A-13 **IN RE: GENE FEUERSINGER AND DENISE CAMPOS**
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF DEPARTMENT OF THE
TREASURY-INTERNAL REVENUE SERVICE
9-27-2019 [[26](#)]

GENE FEUERSINGER/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

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.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as all of the debtors' personal property. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$34,520.42.

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 non-vehicular, personal property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as all of the debtors' personal property has a value of \$34,520.42. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$34,520.42 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.

25. [15-10764](#)-A-13 **IN RE: JUAN DIAZ**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
10-15-2019 [\[57\]](#)

PETER FEAR

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this 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 final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,716.00 and reimbursement of expenses in the amount of \$132.80.

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

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

CIVIL MINUTE ORDER

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

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

Fear Waddell, P.C.'s application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1,716.00 and reimbursement of expenses in the amount of \$132.80. The aggregate allowed amount equals \$1,848.80. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1,848.00 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 / directly by the debtor after completion of the plan's term.

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.

26. [19-13468](#)-A-13 **IN RE: ROBERTO JAUREGUI**
[MHM-2](#)

MOTION TO DISMISS CASE
10-9-2019 [[16](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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 \$1,242.00.

The debtor's opposition that \$3,385.00 will be paid prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$3,385.00.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

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.

27. [19-13570](#)-A-13 **IN RE: THAO VANG AND THOR VUE**
[PBB-1](#)

MOTION TO CONFIRM PLAN
10-3-2019 [\[22\]](#)

THAO VANG/MV
PETER BUNTING

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 trustee, approved by debtor's counsel

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

28. [19-13077](#)-A-13 **IN RE: ANDREA SOUSA**
[JRL-4](#)

RESCHEDULED HEARING RE: MOTION TO CONFIRM PLAN
8-28-2019 [\[37\]](#)

ANDREA SOUSA/MV
JERRY LOWE
RESPONSIVE PLEADING

Final Ruling

The case having been dismissed, the court will deny the motion as moot.

29. [19-13077](#)-A-13 **IN RE: ANDREA SOUSA**
[MHM-1](#)

MOTION TO DISMISS CASE
10-8-2019 [[54](#)]

MICHAEL MEYER/MV
JERRY LOWE

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 \$1,401.92.

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.

30. [19-12678](#)-A-13 **IN RE: ANTONIO HERNANDEZ SILVA**
[MHM-3](#)

MOTION TO DISMISS CASE
10-8-2019 [[42](#)]

MICHAEL MEYER/MV
JEFFREY ROWE
RESPONSIVE PLEADING

No Ruling.

31. [19-13280](#)-A-13 **IN RE: JOE/LILLIANA ALVES**
[SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-18-2019 [[27](#)]

ALLY BANK/MV
JOSEPH ANGELO
ADAM BARASCH/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Chevrolet Traverse

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).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 7 prepetition payments and 2 postpetition payments are past due. The total prepetition delinquency is approximately \$4,083.53, and the total postpetition delinquency is approximately \$1,016.50.

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.

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.

Ally Bank's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 2016 Chevrolet Traverse, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

32. [19-12788](#)-A-13 **IN RE: JOHNNY/MARY MORALES**
[MAZ-1](#)

MOTION TO CONFIRM PLAN
9-24-2019 [[46](#)]

JOHNNY MORALES/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

No Ruling.

33. [19-12788](#)-A-13 **IN RE: JOHNNY/MARY MORALES**
[MAZ-2](#)

MOTION TO VALUE COLLATERAL OF BANK OF STOCKTON
9-24-2019 [[52](#)]

JOHNNY MORALES/MV
MARK ZIMMERMAN

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 2016 Dodge Dart. 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 \$11,643.00.

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 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 2016 Dodge Dart has a value of \$11,643.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$11,643.00 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.

34. [19-12894](#)-A-13 **IN RE: KIMBERLY KING- RICHARDSON**
[MHM-3](#)

RESCHEDULED HEARING RE: MOTION TO DISMISS CASE
9-18-2019 [[30](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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 \$1,900.00.

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.

35. [19-13198](#)-A-13 **IN RE: GERALD SULLIVAN AND ANNETTE**
ESPINOSA-SULLIVAN
[MHM-1](#)

MOTION TO DISMISS CASE
9-20-2019 [[16](#)]

MICHAEL MEYER/MV
PETER BUNTING
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.