

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** THURSDAY  
**DATE:** DECEMBER 1, 2016  
**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 CASES

**GENERAL DESIGNATIONS**

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

**ORAL ARGUMENT**

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

**COURT'S ERRORS IN FINAL RULINGS**

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

1. [16-11309](#)-A-13 CARMEN HARGETT  
MHM-1

PRETRIAL CONFERENCE RE:  
OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
5-26-16 [[14](#)]

TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

*[This matter will be called at 10:00 a.m.]*

**No tentative ruling.**

2. [16-11309](#)-A-13 CARMEN HARGETT  
MHM-3  
MICHAEL MEYER/MV

PRETRIAL CONFERENCE RE:  
OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
7-13-16 [[41](#)]

TIMOTHY SPRINGER/Atty. for dbt.

*[This matter will be called at 10:00 a.m.]*

**No tentative ruling.**

3. [16-12409](#)-A-13 LISA BRADBURY  
SL-2  
LISA BRADBURY/MV  
STEPHEN LABIAK/Atty. for dbt.

MOTION TO CONFIRM PLAN  
10-6-16 [[42](#)]

**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.

4. [16-13220](#)-A-13 GEORGE BONANNO  
MJA-1  
GEORGE BONANNO/MV  
MICHAEL ARNOLD/Atty. for dbt.

MOTION TO CONFIRM PLAN  
10-25-16 [[22](#)]

**Final Ruling**

**Motion:** Confirmation of a Chapter 13 Plan

**Disposition:** Denied without prejudice

**Order:** Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the motion being noticed. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

5. [16-10721](#)-A-13 MANUEL/MICHELLE PENA  
RSW-1  
MANUEL PENA/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
10-11-16 [[36](#)]

**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.

6. [16-11025](#)-A-13 TIM/CHERIE WILKINS MOTION TO CONFIRM PLAN  
FW-2 10-11-16 [[141](#)]  
TIM WILKINS/MV  
PETER FEAR/Atty. for dbt.

**No tentative ruling.**

7. [07-13626](#)-A-13 EDMUND/MARY CASTANEDA MOTION FOR SANCTIONS FOR  
TCS-1 VIOLATION OF THE DISCHARGE  
EDMUND CASTANEDA/MV INJUNCTION  
11-2-16 [[81](#)]  
TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

**Motion:** Contempt

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

**Disposition:** Continued to January 11, 2017, at 9:00 a.m.

**Order:** Civil minute order

This matter is continued to January 11, 2017, at 9:00 a.m. Not later than December 7, 2016, movant shall file and serve a notice of continued hearing date on each respondent and shall file a certificate of service so indicating.

Not later than December 21, 2016, the movant may file and serve on each respondent **admissible** evidence, see LBR 9014-1(d) (7), establishing each of the elements for contempt: "A discharge in a bankruptcy case "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [prepetition] debt as a personal liability of the debtor." § 524(a) (2). A violation of this discharge injunction is enforced through the court's civil contempt authority under section 105(a). *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir.2002). **The debtor has the burden of proving, by clear and convincing evidence, that the offending creditor knowingly and willfully violated the discharge injunction. *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1007 (9th Cir.2006). The offending creditor acts knowingly and willfully if (1) it knew the discharge injunction was applicable and (2) it intended the actions which violated the injunction. Id.567**

**With respect to the first prong, a creditor cannot be held in contempt for violating a discharge injunction unless it has actual knowledge of the injunction, which is a question of fact. *ZiLOG*, 450 F.3d at 1008. If the creditor disputes that it had such knowledge, an evidentiary hearing is required. Id. Actual knowledge of the discharge injunction does not end the inquiry, however, as the creditor also must be aware that its claim against the debtor was subject to the discharge injunction. *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288 (9th**

Cir. BAP 2016). "Whether a party is aware that the discharge injunction is applicable to his or her claim is a fact-based inquiry which implicates a party's subjective belief, even an unreasonable one." Id.

**With respect to the second prong**, courts employ the same analysis regarding violations of the discharge injunction as they do with violations of the automatic stay. Id. **The focus is on whether the creditor's conduct violated the injunction and whether that conduct was intentional; it does not require a specific intent to violate the injunction.** *Knupfer v. Lindblade* (In re Dyer), 322 F.3d 1178, 1191 (9th Cir.2003) (citing *Hardy v. United States (In re Hardy)*, 97 F.3d 1384, 1390 (11th Cir.1996); and *Havelock v. Taxel* (In re Pace), 67 F.3d 187, 191 (9th Cir.1995))." *In re Kabling*, 551 B.R. 440, 444-45 (B.A.P. 9th Cir. 2016).

Not later than December 21, 2016, the movant may file and serve a Certificate of Service so indicating.

8. [16-12828](#)-A-13 MARVITA SEAWELL CONTINUED MOTION TO DISMISS  
MHM-1 CASE  
MICHAEL MEYER/MV 9-22-16 [[22](#)]  
PATRICK GREENWELL/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The matter withdrawn, the matter is dropped as moot.

9. [16-12930](#)-A-13 MOISES/SARA DUENAS MOTION FOR RELIEF FROM  
KAZ-1 AUTOMATIC STAY  
THE BANK OF NEW YORK MELLON/MV 10-27-16 [[48](#)]  
THOMAS GILLIS/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 591 North Capitola Street, Porterville, CA

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).

## **STAY RELIEF**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 2 post-petition payments due on the debt secured by the moving party's lien. Pursuant to the chapter 13 plan, the subject property is to be surrendered. And the debtors have filed a non-opposition to the relief sought. ECF No. 63. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). 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.

The Bank of New York Mellon, as trustee, has filed a motion for relief from the automatic stay that 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 591 North Capitola Street, Porterville, CA, 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.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

10. [15-12832](#)-A-13 MARIO INIGUEZ PEREZ AND OBJECTION TO CLAIM OF MIDLAND  
PBB-1 LILI INIGUEZ CREDIT MANAGEMENT, INC., CLAIM  
MARIO INIGUEZ PEREZ/MV NUMBER 1  
10-18-16 [17]  
PETER BUNTING/Atty. for dbt.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The objection's well-pleaded facts show that the debtor has not made any transactions related to the loan held by the responding party since 2010, more than 4 years prior to the petition on July 20, 2015. The objection will be sustained. The claim will be disallowed.

11. [15-12832](#)-A-13 MARIO INIGUEZ PEREZ AND OBJECTION TO CLAIM OF MIDLAND  
PBB-2 LILI INIGUEZ CREDIT MANAGEMENT, INC., CLAIM  
MARIO INIGUEZ PEREZ/MV NUMBER 2  
10-18-16 [22]

PETER BUNTING/Atty. for dbt.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b) (1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b) (1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The objection's well-pleaded facts show that the debtor has not made any payments or other transactions on the loan held by the respondent claimant within the four years prior to the petition date. The objection will be sustained. The claim will be disallowed.

12. [15-12832](#)-A-13 MARIO INIGUEZ PEREZ AND OBJECTION TO CLAIM OF MIDLAND  
PBB-3 LILI INIGUEZ CREDIT MANAGEMENT, INC., CLAIM  
MARIO INIGUEZ PEREZ/MV NUMBER 3  
10-18-16 [27]

PETER BUNTING/Atty. for dbt.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The objection's well-pleaded facts show that the debtor has not made any payments or other transactions on the loan held by the respondent claimant within the four years prior to the petition date. The objection will be sustained. The claim will be disallowed.

13. [16-10034](#)-A-12 PEDRO/FELIPA GUTIERREZ  
MHM-1  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.

MOTION TO DISMISS CASE  
10-12-16 [[70](#)]

**Final Ruling**

**Motion:** Dismiss Chapter 12 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 § 1208(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan or the order confirming such plan. Payments are delinquent in the amount of \$10,158.59.

**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 12 plan or the order confirming the plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1208(c)(1), (6). The court hereby dismisses this case.

14. [16-11334](#)-A-13 REUEL/ROSELIND DARLING MOTION TO MODIFY PLAN  
GH-1 10-10-16 [[21](#)]  
REUEL DARLING/MV  
GARY HUSS/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.

15. [16-13635](#)-A-13 STEVEN/MARGARITA STROUD ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-9-16 [[16](#)]  
MARK ZIMMERMAN/Atty. for dbt.  
\$80.00 INSTALLMENT PAYMENT  
11/15/16

**Final Ruling**

The installment payment made, the order to show cause is discharged and the case shall remain pending.

16. [16-12136](#)-A-13 JEANETTE TENA  
TCS-3  
JEANETTE TENA/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

AMENDED MOTION TO CONFIRM PLAN  
10-28-16 [[56](#)]

**Final Ruling**

**Motion:** Amended Motion for Confirmation of a Chapter 13 Plan

**Disposition:** Denied

**Order:** Civil minute order

This amended motion, for a hearing on December 1, 2016, has not been noticed properly and will be denied. The amended motion should have been noticed for the same hearing date for the underlying motion to confirm. All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). There is no notice of hearing and no proof of service for the December 1, 2016, hearing date.

The court previously continued the debtor's Motion for Confirmation of First Modified Chapter 13 Plan, at docket no. 47. This motion will remain pending as it was continued to December 21, 2016, at 9:00 a.m. for supplemental declarations from the debtor's relatives.

At the continued hearing date for the underlying motion to confirm, the court will construe the Notice of Errata (which formed the basis for the amended motion to confirm) along with the underlying motion to confirm as necessary. Therefore an additional amended motion to confirm will not be necessary before the hearing on December 21, 2016.

17. [16-13344](#)-A-13 JILL HOFFMAN  
MHM-1  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE  
10-27-16 [[29](#)]

**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 \$398.

**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.

18. [16-13347](#)-A-13 GALE/GLENDA KUNS  
MHM-1  
MICHAEL MEYER/MV  
DAVID JENKINS/Atty. for dbt.

MOTION TO DISMISS CASE  
10-27-16 [[26](#)]

**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 \$6060.

**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.

19. [10-16950](#)-A-12 LUIS AZEVEDO  
HAR-7

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF MCCORMICK,  
BARSTOW, SHEPPARD, WAYTE &  
CARRUTH FOR HILTON A. RYDER,  
DEBTORS ATTORNEY(S)  
10-31-16 [[64](#)]

HILTON RYDER/Att. for dbt.

### **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 12 case, McCormick, Barstow, Sheppard, Wayte & Carruth, LLP has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3473.00 and reimbursement of expenses in the amount of \$48.95.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 12 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

## CIVIL MINUTE ORDER

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

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

McCormick, Barstow, Sheppard, Wayte & Carruth, LLP'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 \$3473.00 and reimbursement of expenses in the amount of \$48.95. The aggregate allowed amount equals \$3521.95. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3521.95 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

20. [12-12650](#)-A-13 ROBERT/MONICA OLIVEIRA MOTION TO MODIFY PLAN  
GMA-2 10-18-16 [[86](#)]  
ROBERT OLIVEIRA/MV  
GEOFFREY ADALIAN/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.

21. [16-13752](#)-A-13 GURMIT SANDHU AND KARMIT MOTION TO VALUE COLLATERAL OF  
GEG-2 BRAR TRANSPORT FUNDING LLC  
GURMIT SANDHU/MV 11-1-16 [[19](#)]  
GLEN GATES/Atty. for dbt.

### **Final Ruling**

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

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2012 Freightliner Cascadia. The vehicle is a commercial vehicle that has not been used for personal use. The court infers it was not acquired for personal use of the debtor. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$45,000.

## CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2012 Freightliner Cascadia has a value of \$45,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$45,000 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.

22. [13-10257](#)-A-13 RAYMOND/DEBRA BRIZENDINE MOTION FOR COMPENSATION BY THE  
BCS-4 LAW OFFICE OF SHEIN LAW GROUP,  
PC FOR BENJAMIN C. SHEIN,  
DEBTORS ATTORNEY(S)  
10-31-16 [[53](#)]

BENJAMIN SHEIN/Atty. for dbt.

### 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, Shein Law Group, PC has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2115.00 and reimbursement of expenses in the amount of \$416.90. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's

attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

#### **CIVIL MINUTE ORDER**

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

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

Shein Law Group, PC'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 \$2115.00 and reimbursement of expenses in the amount of \$416.90. The aggregate allowed amount equals \$2531.90. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2531.90 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

23. [16-13162](#)-A-13 CARRIE RODRIGUEZ

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-3-16 [[27](#)]

#### **Final Ruling**

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

24. [16-10789](#)-A-13 PAUL/MARIA WILLIAMS MOTION TO CONFIRM PLAN  
JRL-5 10-19-16 [[77](#)]  
PAUL WILLIAMS/MV  
JERRY LOWE/Atty. for dbt.  
RESPONSIVE PLEADING

**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.

25. [16-10789](#)-A-13 PAUL/MARIA WILLIAMS MOTION TO DISMISS CASE  
MHM-2 10-25-16 [[85](#)]  
MICHAEL MEYER/MV  
JERRY LOWE/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

26. [16-12828](#)-A-13 MARVITA SEAWELL CONTINUED OBJECTION TO  
MHM-3 CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
10-28-16 [[32](#)]  
PATRICK GREENWELL/Atty. for dbt.

**No tentative ruling.**