

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

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: DECEMBER 7, 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. [16-13302](#)-A-13 LUIS ORTEGA AND NANCY OBJECTION TO CONFIRMATION OF
JHW-1 NUNEZ PLAN BY TD AUTO FINANCE LLC
TD AUTO FINANCE LLC/MV 11-1-16 [[21](#)]
PATRICK KAVANAGH/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

No tentative ruling.

2. [12-19411](#)-A-13 RICHARD/MINDI FARRELL MOTION FOR COMPENSATION FOR
LKW-4 LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
10-28-16 [[90](#)]
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

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).

INTERIM / FINAL BASIS

The court interprets the application as requesting fees and expenses on a final basis and therefore also requesting final approval of all other fees allowed in this case on an interim basis.

OPPOSITION

The opposition by the trustee raises the issue of feasibility as to the \$684.09 that is to be paid by the debtors directly. It also raises the lack of specific language in the plan regarding no discharge of the attorney's fees to be paid directly by the debtors. *See In re Johnson*, 344 B.R. 104, 107-08 (B.A.P. 9th Cir. 2006).

Because confirmation of a modified plan is not before this court, feasibility is not a proper basis for objection. 11 U.S.C. § 1325(a)(6). Feasibility is also not a ground for objection to fees under § 330(a)(1), (4)(B). (The court notes that payment of the fees directly by debtors should not affect feasibility of the plan if such payment is after the completion of the chapter 13 plan.)

When attorneys' fees are to be paid directly by debtors after plan completion, the court requires language regarding the nondischargeability of the fees pursuant to *In re Johnson*, 344 B.R. 104 (B.A.P. 9th Cir. 2006). The court will treat the objection as a courtesy notice to debtors' counsel on this point.

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Offices of Leonard K. Welsh has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2430 and reimbursement of expenses in the amount of \$40.64. 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.

Law Offices of Leonard K. Welsh'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 \$2430 and reimbursement of expenses in the amount of \$40.64. The aggregate allowed amount equals \$2470.64. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1786.55 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 by the debtors directly. 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.

3. [13-17714](#)-A-13 MARK AGUILAR AND PATRICIA MOTION TO MODIFY PLAN
RSW-5 RAMIREZ 10-25-16 [[114](#)]
MARK AGUILAR/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

4. [16-12618](#)-A-13 PAUL/JACKIE PENA CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 9-9-16 [[21](#)]
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [16-12618](#)-A-13 PAUL/JACKIE PENA OBJECTION TO CONFIRMATION OF
MHM-2 PLAN BY MICHAEL H. MEYER
MICHAEL MEYER/MV 11-4-16 [[32](#)]
PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.

6. [16-12720](#)-A-13 FRED/KAREN FRANK OBJECTION TO DEBTOR'S CLAIM OF
MHM-3 EXEMPTIONS
MICHAEL MEYER/MV 10-25-16 [[30](#)]
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Objection: Objection to Claim of Exemptions

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

A debtor may exclude from property of the estate property that is exempt. 11 U.S.C. §§ 522(b)(1); 541(a). "Section 522 of the Bankruptcy Code provides a default list of exemptions but allows states to opt out and define their own exemptions. California has

opted out of the federal exemption scheme and limited Chapter 7 petitioners to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199. "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996) (Ford, J.); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

The trustee objects to the debtor's claim of exemption in "tools used in business" valued at \$3000. The exemption is claimed under Cal. Civ. Proc. Code § 703.140(b)(6). The tools were used, however, in debtor's prior business that was closed in 2014 according to the Statement of Financial Affairs, Question 27. A tool cannot qualify as a tool of the trade without a relevant trade or business to which the tool is applied or used. Further, the trade or business to which the tool applies must be in prospect for use by the debtor based on past use in such trade or business or current or prospective use.

7. [14-12223](#)-A-13 ANDRES ALVAREZ AND ELVIRA MOTION FOR COMPENSATION FOR
LKW-9 DE CAMPOS LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
10-31-16 [[178](#)]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

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).

INTERIM / FINAL BASIS

The court interprets the application as requesting fees and expenses on an interim basis.

OPPOSITION

The opposition by the trustee raises the issue of feasibility as to the \$684.09 that is to be paid by the debtors directly. It also raises the lack of specific language in the plan regarding no discharge of

the attorney's fees to be paid directly by the debtors. See *In re Johnson*, 344 B.R. 104, 107-08 (B.A.P. 9th Cir. 2006).

Because confirmation of a modified plan is not before this court, feasibility is not a proper basis for objection. 11 U.S.C. § 1325(a)(6). Feasibility is also not a ground for objection to fees under § 330(a)(1), (4)(B). (The court notes that payment of the fees directly by debtors should not affect feasibility of the plan if such payment is after the completion of the chapter 13 plan.)

When attorneys' fees are to be paid directly by debtors after plan completion, the court requires language regarding the nondischargeability of the fees pursuant to *In re Johnson*, 344 B.R. 104 (B.A.P. 9th Cir. 2006). The court will treat the objection as a courtesy notice to debtors' counsel on this point.

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Offices of Leonard K. Welsh has applied for an allowance of interim compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1447.50 and reimbursement of expenses in the amount of \$1.20.

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.

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.

Law Offices of Leonard K. Welsh'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 \$1447.50 and reimbursement of expenses in the amount of \$1.20. The aggregate allowed amount equals \$1448.70. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1448.70 shall be allowed to be paid by the debtors 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.

8. [16-11330](#)-A-13 COREY GARCIA MOTION TO CONFIRM PLAN
RSW-2 10-26-16 [[60](#)]
COREY GARCIA/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

9. [11-19832](#)-A-13 JEAN MORGAN MOTION TO APPROVE LOAN
PK-8 MODIFICATION
JEAN MORGAN/MV 11-16-16 [[185](#)]
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted

Order: Prepared by moving party according to the instructions below

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

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

10. [16-13338](#)-A-13 MIGUEL/ADRIANA GONZALEZ MOTION TO DISMISS CASE
MHM-1 11-4-16 [[22](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [16-13338](#)-A-13 MIGUEL/ADRIANA GONZALEZ OBJECTION TO CONFIRMATION OF
PPR-1 PLAN BY CARRINGTON MORTGAGE
CARRINGTON MORTGAGE SERVICES, SERVICES, LLC
LLC/MV 11-1-16 [[14](#)]
PATRICK KAVANAGH/Atty. for dbt.
DIANA TORRES-BRITO/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Secured Creditor Carrington Mortgage Services, LLC, objects to confirmation based on lack of feasibility given the plan's understatement of the arrearages owed to this creditor. See 11 U.S.C. § 1325(a)(6). The court accepts the declaration of the creditor's employee, who has personal knowledge of the records pertaining to this loan and authority to certify the creditor's records. Garner Decl. ¶¶ 1, 3. This declaration supports a conclusion that the arrearages are approximately \$15,309.30. The plan lists the arrearages as \$5872.00. The court finds that the plan is not feasible and will sustain the objection.

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.

Secured Creditor Carrington Mortgage Services, LLC's objection to confirmation of the proposed plan 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. Confirmation will be denied without prejudice.

12. [16-13941](#)-A-13 STEPHANIE BRADICK
PK-1
ZIMMERMAN REAL ESTATE SERVICES
INC./MV
PATRICK KAVANAGH/Atty. for mv.
DISMISSED
- MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-9-16 [[12](#)]

Final Ruling

The case dismissed, the matter is dropped as moot.

13. [16-13343](#)-A-13 AIDE/JAMES BLANCO
NLG-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
PATRICK KAVANAGH/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
10-27-16 [[20](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

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

14. [16-13044](#)-A-13 CHASITY ARIAS
MHM-1
- WILLIAM OLCOTT/Atty. for dbt.
WITHDRAWN
- CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
10-6-16 [[16](#)]

Final Ruling

The objection withdrawn, the matter is dropped as moot.

15. [16-13044](#)-A-13 CHASITY ARIAS
MHM-2
MICHAEL MEYER/MV
WILLIAM OLCOTT/Atty. for dbt.
WITHDRAWN
- OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
10-25-16 [[19](#)]

Final Ruling

The objection withdrawn, the matter is dropped as moot.

16. [16-12851](#)-A-13 ALLEN/KATHERIN TOLBERT
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN
- MOTION TO DISMISS CASE
11-2-16 [[14](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [16-12953](#)-A-13 REGINA FADIPE
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE
10-6-16 [[21](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [16-12953](#)-A-13 REGINA FADIPE
MHM-2
ROBERT WILLIAMS/Atty. for dbt.
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
11-4-16 [[27](#)]

No tentative ruling.

19. [16-11354](#)-A-13 ODILON/SAURISARET CONTINUED MOTION TO VALUE
PIM-2 PEREZ-FLORES COLLATERAL OF BAYVIEW LOAN
ODILON PEREZ-FLORES/MV SERVICING, LLC
8-23-16 [[67](#)]
PHILLIP MYER/Atty. for dbt.

Final Ruling

The matter is continued to January 4, 2017, at 9:00 a.m. pursuant to stipulation and order.

20. [16-11354](#)-A-13 ODILON/SAURISARET CONTINUED MOTION TO CONFIRM
PIM-2 PEREZ-FLORES PLAN
ODILON PEREZ-FLORES/MV 8-23-16 [[70](#)]
PHILLIP MYER/Atty. for dbt.

Final Ruling

The matter is continued to January 4, 2017, at 9:00 a.m. pursuant to stipulation and order.

21. [16-11261](#)-A-13 CHRISTOPHER/CHANDA WEEMS MOTION TO DISMISS CASE
MHM-1 11-8-16 [[63](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

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

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

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

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

22. [16-13064](#)-A-13 PAUL YANEZ MOTION TO DISMISS CASE
MHM-1 10-6-16 [[17](#)]
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [16-13064](#)-A-13 PAUL YANEZ OBJECTION TO CONFIRMATION OF
MHM-2 PLAN BY TRUSTEE MICHAEL H.
MEYER
11-4-16 [[23](#)]
NEIL SCHWARTZ/Atty. for dbt.

No tentative ruling.

24. [11-62772](#)-A-13 JOHN/BETH NEMETH MOTION TO MODIFY PLAN
PWG-8 10-26-16 [[338](#)]
JOHN NEMETH/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

25. [11-62772](#)-A-13 JOHN/BETH NEMETH
PWG-9
JOHN NEMETH/MV
PHILLIP GILLET/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
ALTA ONE FEDERAL CREDIT UNION
11-9-16 [[350](#)]

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 12565 Back Canyon Road, Caliente, CA.

The court values the collateral at \$400,000. 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.

The debtor's motion to value real 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 real property collateral located at 12565 Back Canyon Road, Caliente, CA, has a value of \$400,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

26. [16-13072](#)-A-13 PATRICIA STUMBAUGH MOTION TO DISMISS CASE
MHM-1 10-6-16 [[14](#)]
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [16-13072](#)-A-13 PATRICIA STUMBAUGH OBJECTION TO DEBTOR'S CLAIM OF
MHM-2 EXEMPTIONS
MICHAEL MEYER/MV 10-25-16 [[18](#)]
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

An amended Schedule C has been filed. The objection will be overruled as moot.

28. [16-12776](#)-A-13 TOMMY KEELING MOTION TO DISMISS CASE
MHM-2 10-6-16 [[32](#)]
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.
DISMISSED

WITHDRAWN

Final Ruling

The case dismissed, the matter is dropped as moot.

29. [16-13278](#)-A-13 TERESA ROBERTS
MHM-1
MICHAEL MEYER/MV

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
11-9-16 [[25](#)]

NEIL SCHWARTZ/Atty. for dbt.

Final Ruling

Motion: Convert Chapter 13 Case to Chapter 7 or, in the Alternative, Dismiss Chapter 13 Case

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

Disposition: Granted, and the court will convert the case

Order: Prepared by the movant

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 has failed to make all payments due under the plan, § 1307(c)(1) and (c)(4). This constitutes cause for dismissal or conversion.

Further, the debtor is ineligible to be a debtor under § 109(e), because she is not an individual with regular income as defined by § 101(3). An individual with regular income must have income "sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title." 11 U.S.C. § 101(30).

Here, the debtor's net income is only \$801.00 per month but her plan payment is \$3800 per month. This does not constitute income that is sufficiently stable to allow the debtor to make requisite plan payments.

Further, to satisfy liquidation, the debtor would need to pay all, or nearly all, of her general unsecured debt of \$232,726.01 (the amount of general unsecured claims stated in section 2.15 of the plan). Assuming a 60-month plan, the payment would need to be at least \$3878 (excluding trustee's fees and attorney's fees) given that liquidation would require about 100% dividend to unsecured creditors. But debtor's net income is only \$801. Because debtor can repay most, if not all, of her creditors efficiently in a chapter 7 liquidation, the court finds that conversion of this case is the alternative that is in the best interests of the creditors and the estate.

30. [16-10784](#)-A-13 ADAM AGCAOILI
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
9-12-16 [[53](#)]

Final Ruling

Pursuant to the court's civil minutes dated November 2, 2016, the court continued the hearing on the motion to coincide with the hearing on confirmation. The motion to dismiss was for failure to set a plan for hearing and failure to confirm a chapter 13 plan. The court will deny the motion as moot.

31. [16-10784](#)-A-13 ADAM AGCAOILI
PK-2
ADAM AGCAOILI/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
10-14-16 [[59](#)]

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted

Order: Prepared by moving party according to the instructions below

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

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

32. [16-10784](#)-A-13 ADAM AGCAOILI MOTION TO CONFIRM PLAN
PK-3 10-17-16 [[65](#)]
ADAM AGCAOILI/MV
PATRICK KAVANAGH/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.

33. [16-13493](#)-A-13 MONICA BAUER ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-31-16 [[19](#)]

No tentative ruling.

34. [16-13493](#)-A-13 MONICA BAUER MOTION TO DISMISS CASE
MHM-1 11-8-16 [[23](#)]
MICHAEL MEYER/MV

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

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.