

**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: WEDNESDAY**  
**DATE: DECEMBER 21, 2016**  
**CALENDAR: 9:00 A.M. CHAPTER 7 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. [16-13501](#)-A-13 GARY LOY

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-1-16 [[35](#)]

SCOTT LYONS/Atty. for dbt.

### **Tentative Ruling**

If the installment payment of \$77 due November 28, 2016, has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

2. [16-13704](#)-A-13 JESUS JUAREZ

MOTION TO DISMISS CASE  
11-21-16 [[15](#)]

MHM-1

MICHAEL MEYER/MV

THOMAS GILLIS/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.

3. [11-16906](#)-A-13 DANIEL/ANNA VARGAS  
MHM-1  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.

OBJECTION TO CLAIM OF FIRESIDE  
BANK, CLAIM NUMBER 2  
11-1-16 [[34](#)]

### **Final Ruling**

**Objection:** Objection to Claim No. 2

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

**Disposition:** Sustained

**Order:** Civil minute order

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

### **LEGAL STANDARDS**

#### Deemed Allowance under § 502(a)

Section 502(a) provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). If properly executed and filed under the rules along with all supporting documentation that may be required, *see, e.g.,* Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. *See* Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

#### State Law on Waiver

With limited exceptions, § 502(b)(1) of the Bankruptcy Code means that “any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy.” *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

Under California state law, waiver can be asserted as a defense to a claim. “California courts will find waiver when a party intentionally relinquishes a right, or when that party’s acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished.” *Intel Corp. v. Hartford Acc. & Indem. Co.*, 952 F.2d 1551, 1559 (9th Cir. 1991) (citation omitted).

### **DISCUSSION**

The respondent and claimant Fireside Bank, has not accepted funds to be distributed on its claim. But until an objection to the claim is brought, the claim remains allowed. And the trustee must continue to pay all allowed claims consistent with the plan. § 502(a).

By not accepting funds, and by leaving an answering-service message waiving balances owed on loans for vehicle purchases that had been held by Fireside, the claimant has waived its right to receipt of any

further amounts on its claim. These acts are highly inconsistent with an intent to enforce the right to any unpaid balance of the claim. This also creates an impossibility for the trustee to pay the allowed claim consistent with the trustee's duties.

Given the claimant's waiver of its right to receive any remaining balance of its claim, the court will liquidate the amount of the claim at the amount paid by the trustee to the claimant.

The claim will be disallowed in its entirety.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the objection to Claim No. 2 is sustained. The court liquidates the amount of the claim at the amount paid by the trustee on the claim. The claim will be disallowed in its entirety.

4. [15-14711](#)-A-13 ANDREA SOUSA  
MHM-4  
MICHAEL MEYER/MV  
DAVID JENKINS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO VACATE  
11-21-16 [[115](#)]

**No tentative ruling.**

5. [16-13613](#)-A-13 MANUEL SOUZA  
MHM-1  
MICHAEL MEYER/MV  
MARK NELSON/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
11-17-16 [[19](#)]

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

6. [16-13015](#)-A-7 BARBARA LOPEZ POSADA CONTINUED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
10-24-16 [[43](#)]  
  
SCOTT LYONS/Atty. for dbt.  
CONVERTED TO CHAPTER 7  
12/1/16

**No tentative ruling.**

7. [16-12317](#)-A-13 JOSE GONZALEZ MOTION TO CONFIRM PLAN  
ALG-2 11-10-16 [[55](#)]  
JOSE GONZALEZ/MV  
JANINE ESQUIVEL/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

8. [16-13620](#)-A-13 RUBEN/KARIMA PARKS MOTION TO DISMISS CASE  
MHM-1 11-17-16 [[20](#)]  
MICHAEL MEYER/MV  
JOEL WINTER/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

9. [16-14023](#)-A-13 RUBEN CHAVEZ AND SOCORRO MOTION FOR RELIEF FROM  
HLF-1 VILLEGAS AUTOMATIC STAY  
ZINC AUTO FINANCE, INC./MV 12-7-16 [[12](#)]  
THOMAS GILLIS/Atty. for dbt.  
JUSTIN HARRIS/Atty. for mv.

**No tentative ruling.**

10. [16-13634](#)-A-13 ANDREW ESPARZA MOTION TO DISMISS CASE  
MHM-1 11-22-16 [[21](#)]  
MICHAEL MEYER/MV  
GLEN GATES/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

11. [16-12136](#)-A-13 JEANETTE TENA CONTINUED AMENDED MOTION TO  
TCS-3 CONFIRM PLAN  
JEANETTE TENA/MV 10-28-16 [[56](#)]  
TIMOTHY SPRINGER/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.

12. [16-12836](#)-A-13 JOHN/NANCY ALVA  
TCS-2  
JOHN ALVA/MV

CONTINUED MOTION TO VALUE  
COLLATERAL OF CONSUMER  
PORTFOLIO SERVICES  
10-4-16 [[21](#)]

TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

### **Final Ruling**

The motion is continued to January 11, 2017, at 9:00 a.m. If a stipulation resolving the matter and an order approving the stipulation is not in the file, not later than 7 days prior to the continued hearing the parties shall file a status report.

13. [16-12836](#)-A-13 JOHN/NANCY ALVA  
TCS-3  
JOHN ALVA/MV

CONTINUED MOTION TO VALUE  
COLLATERAL OF WHEELS FINANCIAL  
GROUP, LLC  
10-4-16 [[25](#)]

TIMOTHY SPRINGER/Atty. for dbt.

### **Tentative 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 2004 Toyota Tacoma Double Cab. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$7749.

#### **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 2004 Toyota Tacoma Double Cab has a value of \$7749. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7749 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.

14. [16-13639](#)-A-13 JASON/MONA MENDONCA MOTION TO DISMISS CASE  
MHM-1 11-17-16 [[18](#)]  
MICHAEL MEYER/MV  
JERRY LOWE/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).



17. [16-13749](#)-A-13 ANTONIO TINOCO  
MHM-1  
MICHAEL MEYER/MV  
DAVID EGLI/Atty. for dbt.

MOTION TO DISMISS CASE  
11-22-16 [[17](#)]

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **CASE DISMISSAL**

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

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e) (2) (A)-(B).

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.

18. [16-13651](#)-A-13 MATILDE BRABO  
JDR-1  
MATILDE BRABO/MV

MOTION TO VALUE COLLATERAL OF  
MORTGAGE ELECTRONIC SYSTEMS,  
INC.  
11-16-16 [[14](#)]

JEFFREY ROWE/Atty. for dbt.

### **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 101 Nutmeg Ave., Atwater, CA.

The court values the collateral at \$225,000. 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 101 Nutmeg Ave., Atwater, CA, has a value of \$225,000. 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.

19. [16-13752](#)-A-13 GURMIT SANDHU AND KARMIT MOTION TO DISMISS CASE  
MHM-1 BRAR 11-22-16 [[29](#)]  
MICHAEL MEYER/MV  
GLEN GATES/Atty. for dbt.

**No tentative ruling.**

20. [16-14254](#)-A-13 RICHARD/VERONICA ESPINOZA MOTION TO EXTEND AUTOMATIC STAY  
TCS-1 12-10-16 [[14](#)]  
RICHARD ESPINOZA/MV  
TIMOTHY SPRINGER/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

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

**Order:** Prepared by moving party pursuant to the instructions below

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

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

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

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

21. [16-10082](#)-A-13 RICARDO MONTANANA MOTION TO SELL  
FW-2 11-22-16 [[35](#)]  
RICARDO MONTANANA/MV  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Sell Property [Real Property]

**Notice:** LBR 9014-1(f) (1); written opposition required; non-oppositions filed by Flagstar Bank, FSB, and trustee

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to the instructions below and approved as to form and content by the Chapter 13 trustee

**Property:** 9884 North Rowell Avenue, Fresno, CA

**Buyer:** Bruce Nelson, Nancy Nelson

**Sale Price:** \$310,000

**Sale Type:** Private sale subject to overbid opportunity

**Broker's Commission:** 6% to be shared with cooperating broker as provided by listing agreement or custom

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).

Confirmation of a Chapter 13 plan reverts property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

Section 363(b) (1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b) (1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a

proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

22. [15-13995](#)-A-13 VICTOR/NICHOLAS DE LA TORRE MOTION TO SELL  
DRJ-2 TORRE 11-22-16 [[34](#)]  
VICTOR DE LA TORRE/MV  
DAVID JENKINS/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Sell Property [Real Property]

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

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to the instructions below and approved as to form and content by both the Chapter 13 trustee and Cenlar FSB, servicer for LoanDepot.com LLC

**Property:** 3547 Luminary Way, Clovis, CA

**Buyer:** Christopher Telesmanic

**Sale Price:** \$295,000

**Sale Type:** § 363(b) private sale subject to overbid opportunity

Confirmation of a Chapter 13 plan reverts property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); see also *In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The order shall be approved by the Chapter 13 trustee and Cenlar FSB as to form and content. The order shall contain language requiring their approval of the escrow instructions and closing statement for the sale.

The order shall contain the following conditions for the sale: (1) receipt of funds by Cenlar from the escrow agent handling the sale sufficient to pay off Cenlar's lien based on a current payoff demand by Cenlar, and/or (2) express written consent of Cenlar as to any short sale of the property.

23. [16-13695](#)-A-13 INPREET SINGH MOTION TO DISMISS CASE  
MHM-1 11-22-16 [[28](#)]  
MICHAEL MEYER/MV  
JERRY LOWE/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

24. [15-13096](#)-A-13 CRYSTAL MONROY CERVANTES MOTION FOR COMPENSATION BY THE  
FW-3 LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL,  
DEBTORS ATTORNEY(S)  
11-18-16 [[96](#)]  
PETER FEAR/Atty. for dbt.

**Final Ruling**

**Application:** Allowance of Interim Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

**COMPENSATION AND EXPENSES**

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$16,097.00 and reimbursement of expenses in the amount of \$525.45.

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

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

## CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$16,097.00 and reimbursement of expenses in the amount of \$525.45. The aggregate allowed amount equals \$16,622.45. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$9,250.00 shall be allowed as an administrative expense to be paid through the plan. The remainder of the allowed amounts, shall be paid by the trustee to the extent there are funds available for such fees, or, if such funds are not available, then any remainder shall be paid by the debtors directly after completion of the plan.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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

25. [16-13097](#)-A-13 JOYCE LEHR  
MHM-1  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
11-10-16 [[25](#)]

### Final Ruling

**Objection:** Objection to Claim of Exemptions

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

**Disposition:** Sustained

**Order:** Prepared by the trustee

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).

For the reasons stated in the objection, and based on the lack of opposition by debtor, the court will sustain the objection. The debtor may use exemptions only under California exemption law.

26. [16-13197](#)-A-13 BENJAMIN CASTILLO OBJECTION TO DEBTOR'S CLAIM OF  
MHM-2 EXEMPTIONS  
MICHAEL MEYER/MV 11-10-16 [[22](#)]  
SUSAN HEMB/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

The objection will be overruled as moot. An amended Schedule C has been filed after the filing of the objection.

27. [16-13015](#)-A-7 BARBARA LOPEZ POSADA CONTINUED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
11-21-16 [[72](#)]  
SCOTT LYONS/Atty. for dbt.

**No tentative ruling.**