

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** JANUARY 4, 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. [13-17714](#)-A-13 MARK AGUILAR AND PATRICIA MOTION FOR RELIEF FROM  
KAZ-1 RAMIREZ AUTOMATIC STAY  
U.S. BANK TRUST, N.A./MV 11-17-16 [[124](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 901 Engstrom Street, Soledad, 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**

The debtor has defaulted on a loan from the moving party secured by the property described above, and at least 34 postpetition payments are past due. In addition, the confirmed plan provides that the failure to include a secured claim in Class 1, 2, 3, or 4 of the plan may be cause to terminate the automatic stay. The plan does not provide for the moving party's secured claim. Cause exists to grant relief from stay 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.

U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, 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 901 Engstrom Street, Soledad, 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.

2. [16-12618](#)-A-13 PAUL/JACKIE PENA  
MHM-3  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
11-28-16 [[43](#)]

### **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).

### **STANDARDS**

The Ninth Circuit has interpreted 11 U.S.C. § 522(d)(7), the federal analog to section 703.140(b)(7) of the California Code of Civil Procedure, and it found that the provision exempts only the debtor's ownership interest in the policy. The ownership interest that may be exempted is "the right to maintain the policy and name a beneficiary," and does not exempt any other rights the debtor may have, such as the policy owner's right to the policy's cash surrender value (or loan value) or a beneficiary's right to the policy's face value. See *Woodson v. Fireman's Fund Ins. Co (In re Woodson)*, 839 F.2d 610, 618 & n.12 (9th Cir. 1988). The *Woodson* court distinguished between owning a policy and being the policy's beneficiary. *Id.* at 618-19. Even a debtor who happens to be both an owner and a beneficiary may claim only the ownership interest as exempt under § 522(d)(7). *Id.*

This interpretation holds true for section 703.140(b)(7) of the California Code of Civil Procedure, a substantively identical exemption provision under California law. Further, to read section 703.140(b)(7) to include the right to exempt the cash surrender value or loan value of the policy would render section 703.140(b)(8) superfluous.

### **APPLICATION**

The debtors have claimed an exemption, valued in dollars, in a life insurance policy listed on Schedule C. The trustee objects to the exemption on grounds that California Code of Civil Procedure section 703.140(b)(7) only permits an exemption in the debtor's ownership interest in a the life insurance contract itself, which does not

include other rights under the policy. The trustee is correct. The objection will be sustained.

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

IT IS ORDERED that the objection is sustained.

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| 3. | <a href="#"><u>16-13629</u></a> -A-13 JESSIE BROCKMAN<br>MHM-1<br>MICHAEL MEYER/MV<br>PATRICK KAVANAGH/Atty. for dbt. | OBJECTION TO DEBTOR'S CLAIM OF<br>EXEMPTIONS<br>11-28-16 [ <a href="#"><u>14</u></a> ] |
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#### **Final Ruling**

The objection is overruled as moot. An amended Schedule C was filed December 21, 2016, after this objection was filed.

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| 4. | <a href="#"><u>16-11330</u></a> -A-13 COREY GARCIA<br>MHM-3<br>MICHAEL MEYER/MV<br>ROBERT WILLIAMS/Atty. for dbt. | MOTION TO DISMISS CASE<br>11-15-16 [ <a href="#"><u>70</u></a> ] |
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#### **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 \$1260.

### **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.

5. [16-13930](#)-A-13 DAVID SMITH  
MHM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-12-16 [[13](#)]

PATRICK KAVANAGH/Atty. for dbt.

**No tentative ruling.**

6. [16-13338](#)-A-13 MIGUEL/ADRIANA GONZALEZ  
MHM-3

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-13-16 [[45](#)]

PATRICK KAVANAGH/Atty. for dbt.

**No tentative ruling.**

7. [16-13338](#)-A-13 MIGUEL/ADRIANA GONZALEZ  
PPR-1  
CARRINGTON MORTGAGE SERVICES,  
LLC/MV

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
CARRINGTON MORTGAGE SERVICES,  
LLC  
11-1-16 [[14](#)]

PATRICK KAVANAGH/Atty. for dbt.  
DIANA TORRES-BRITO/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

8. [16-13241](#)-A-13 MONIQUE BOOKOUT  
RSW-1  
MONIQUE BOOKOUT/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA INC.  
12-12-16 [[16](#)]

### **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 Mitsubishi Lancer. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$4650.

### **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 Mitsubishi Lancer has a value of \$4650. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$4650 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.

9. <a href="#"><u>16-14042</u></a> -A-13    DANNY/CANDACE MACIAS JHW-1 AMERICREDIT FINANCIAL SERVICES, INC./MV ALLAN WILLIAMS/Atty. for dbt. JENNIFER WANG/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-23-16 [ <a href="#"><u>9</u></a> ]
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**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2009 BMW 5 Series

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).

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as at least 3.2 prepetition payments are past due. The total past due balance of principal and interest is approximately \$2823.30. The creditor alleges that no postpetition payments were made as of the date of the motion, November 23, 2016.

The movant's claim is not listed in the plan. The movant also obtained possession of the vehicle prepetition. The debtors have not opposed the relief sought.

Therefore, cause exists to grant relief 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.

10. [16-10243](#)-A-13 ANGEL/LAURA SEGURA  
WDO-1  
ANGEL SEGURA/MV  
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA  
11-14-16 [[32](#)]

### **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 6621 Dorva Ave., Bakersfield, CA.

The court values the collateral at \$110,000. 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 6621 Dorva Ave., Bakersfield, CA, has a value of \$110,000. 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.

11. [16-13044](#)-A-13 CHASITY ARIAS  
MHM-3  
MICHAEL MEYER/MV  
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO DISMISS CASE  
11-17-16 [[44](#)]

### **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 \$1587.

### **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.

12. [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.  
ORDER #113

**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 court does not find a certificate of service showing notice given to all creditors and parties in interest for the original motion. Fed. R. Bankr. P. 2002(b).

Furthermore, the plan or a summary of the plan must be transmitted to all creditors and parties in interest. Fed. R. Bankr. P. 3015(d). At docket no. 99, the debtors served notice on certain creditors of the notice of continued hearing on the motion. But the motion itself was not served. Nor was a plan served.

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 notice. 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.

13. [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.  
ORDER #114

**Final Ruling**

The hearing on the motion to value collateral is dropped. The parties have resolved matter by stipulation as to the collateral's value, ECF No. 115.

14. [16-13854](#)-A-13 ANNE RODY  
MHM-1  
  
PATRICK KAVANAGH/Atty. for dbt.  
  
**No tentative ruling.**
15. [16-11261](#)-A-13 CHRISTOPHER/CHANDA WEEMS  
MHM-2  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
DISMISSED  
  
**Final Ruling**  
  
The case dismissed the objection is overruled as moot.
16. [16-13064](#)-A-13 PAUL YANEZ  
MHM-2  
  
NEIL SCHWARTZ/Atty. for dbt.  
  
**No tentative ruling.**
17. [11-62772](#)-A-13 JOHN/BETH NEMETH  
PWG-8  
JOHN NEMETH/MV  
PHILLIP GILLET/Atty. for dbt.  
RESPONSIVE PLEADING  
  
**No tentative ruling.**
18. [16-13279](#)-A-13 CHAD/CANDACE WESTFALL  
MHM-1  
  
PHILLIP GILLET/Atty. for dbt.  
  
**No tentative ruling.**
- OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-13-16 [[18](#)]
- OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
11-28-16 [[70](#)]
- CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
11-4-16 [[23](#)]
- CONTINUED STATUS CONFERENCE RE:  
MOTION TO MODIFY PLAN  
10-26-16 [[338](#)]
- OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-12-16 [[17](#)]

19. [15-14786](#)-A-13 MARY SMITH  
DMG-9

MOTION FOR COMPENSATION FOR D.  
MAX GARDNER, DEBTORS  
ATTORNEY(S)  
12-1-16 [[122](#)]

D. GARDNER/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, D. Max Gardner has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3717.00 and reimbursement of expenses in the amount of \$271.32.

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.

D. Max Gardner'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 \$3717.00 and reimbursement of expenses in the amount of \$271.32. The aggregate

allowed amount equals \$3988.32. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3988.32 shall be allowed as an administrative expense to be paid through 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.

20. [16-13493](#)-A-13 MONICA BAUER

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-30-16 [[27](#)]

DISMISSED

### **Final Ruling**

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