

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY DAY
DATE: JANUARY 11, 2017
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.

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. [16-14100](#)-A-13 TIMOTHY HUTCH
BDA-1
CAPITAL ONE AUTO FINANCE/MV
DAVID JENKINS/Atty. for dbt.
BRET ALLEN/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY CAPITAL ONE AUTO
FINANCE
11-28-16 [[14](#)]

No tentative ruling.

2. [13-12504](#)-A-13 ROEL/ALMA CALO
AP-1
JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
SCOTT LYONS/Atty. for dbt.
GINA KIM/Atty. for mv.
RESPONSIVE PLEADING
- MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-22-16 [[38](#)]

No tentative ruling.

3. [16-13905](#)-A-13 LUIS MORENO
SL-1
LUIS MORENO/MV
STEPHEN LABIAK/Atty. for dbt.
- MOTION TO CONFIRM PLAN
11-17-16 [[11](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

4. [15-14711](#)-A-13 ANDREA SOUSA MOTION TO VACATE
MHM-4 11-21-16 [[115](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.
ECF NO. 130

No tentative ruling.

5. [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.
\$154.00 FINAL INSTALLMENT
FEE PAID

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.

6. [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.
\$154.00 FINAL INSTALLMENT
FEE PAID

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.

7. [15-10019](#)-A-13 MICHAEL/NATALIE FAGUNDES MOTION TO DISMISS CASE
MHM-2 11-30-16 [[65](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING
MOTION WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

8. [16-13620](#)-A-13 RUBEN/KARIMA PARKS
JDW-1
RUBEN PARKS/MV
JOEL WINTER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE AUTO
12-12-16 [[28](#)]

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

9. [16-13620](#)-A-13 RUBEN/KARIMA PARKS
JDW-2
RUBEN PARKS/MV
JOEL WINTER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GM FINANCIAL
12-12-16 [[32](#)]

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

10. [12-11221](#)-A-13 KELLY YOST
FW-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
12-13-16 [[62](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2259.00 and reimbursement of expenses in the amount of \$108.32. 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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2259.00 and reimbursement of expenses in the amount of \$108.32. The aggregate allowed amount equals \$2367.32. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2367.32 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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

11. [16-13321](#)-A-13 GLADYS HENRY

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-22-16 [[22](#)]

JAMES MILLER/Atty. for dbt.

No tentative ruling.

12. [07-13626](#)-A-13 EDMUND/MARY CASTANEDA
TCS-1
EDMUND CASTANEDA/MV

CONTINUED MOTION FOR SANCTIONS
FOR VIOLATION OF THE DISCHARGE
INJUNCTION
11-2-16 [[81](#)]

TIMOTHY SPRINGER/Atty. for dbt.
RESCHEDULED TO 3/2/17, ECF
NO. 95

Final Ruling

Pursuant to order, ECF #95, the matter is continued to March 2, 2017,
at 9:00 a.m.

13. [16-12326](#)-A-13 JOSE MARTINEZ AND MARIA
TOG-3 SARAVIA
JOSE MARTINEZ/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
OPPOSITION WITHDRAWN

MOTION TO CONFIRM PLAN
11-29-16 [[63](#)]

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.

14. [16-13828](#)-A-13 SANTOS ARROYO AND SOCORRO OBJECTION TO CONFIRMATION OF
MHM-1 GARCIA PLAN BY TRUSTEE MICHAEL H.
MEYER
12-15-16 [[13](#)]

BENNY BARCO/Atty. for dbt.

No tentative ruling.

15. [11-19929](#)-A-13 JOHN/NORMA PINEDO MOTION TO DISMISS CASE
MHM-8 12-12-16 [[167](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [16-13634](#)-A-13 ANDREW ESPARZA MOTION TO CONFIRM PLAN
GEG-2 12-1-16 [[28](#)]
ANDREW ESPARZA/MV
GLEN GATES/Atty. for dbt.
OPPOSITION WITHDRAWN

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.

17. [16-13634](#)-A-13 ANDREW ESPARZA
MHM-2
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.
WITHDRAWN
- OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-28-16 [[25](#)]

Final Ruling

The objection withdrawn, the matter is dropped as moot.

18. [16-12836](#)-A-13 JOHN/NANCY ALVA CONTINUED MOTION TO VALUE
TCS-2 COLLATERAL OF CONSUMER
JOHN ALVA/MV PORTFOLIO SERVICES
10-4-16 [[21](#)]

TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

19. [16-13036](#)-A-13 JOSE/KATRINA INZUNZA
 PBB-4
 JOSE INZUNZA/MV

 PETER BUNTING/Att’y. for dbt.
- MOTION TO VALUE COLLATERAL OF
WELLS FARGO FINANCIAL NATIONAL
BANK
12-8-16 [[49](#)]

Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of personal property described as a sectional. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$700.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a sectional has a value of \$700. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$700 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.

20. [11-62137](#)-A-13 HENRY/DIANA CAMPOS MOTION TO DISMISS CASE
MHM-1 12-9-16 [[85](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

21. [11-61439](#)-A-13 CANDELARIA SANCHEZ CONTINUED MOTION FOR RELIEF
WFM-1 FROM AUTOMATIC STAY
CITIMORTGAGE/MV 9-15-16 [[37](#)]
CORT WIEGAND/Atty. for dbt.
WILLIAM MCDONALD/Atty. for mv.

No tentative ruling.

22. [14-10840](#)-A-13 SAMUEL/ISABEL CRUTCHFIELD OBJECTION TO CLAIM OF ROBERT
WSC-7 URANTIA, CLAIM NUMBER 11 AND 12
SAMUEL CRUTCHFIELD/MV 12-15-16 [[80](#)]
WILLIAM COLLIER/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained in part, overruled in part

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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).

CLAIM NO. 12

As the objection notes, the court has already ruled on the objection to Claim No. 12 as a duplicate claim. As a result, to the extent the objection raises an objection to Claim No. 12, the objection is overruled in part.

CLAIM NO. 11

The court is unclear whether the debtors request the court to (i) disallow the non-priority portion of the claim in its entirety or (ii) disallow such portion of the claim as a priority claim but allow this same amount as an unsecured non-priority claim. The objection could be much clearer on this point.

The objection contains an attached judgment (based on a state labor commissioner award) forming the basis of the claim attached as an exhibit. The judgment breaks down the portions of the judgment that are for wages (\$2066), liquidated damages (\$2,066), interest (\$991.68), and additional wages accrued pursuant to Labor Code section 203 as a penalty (\$480). The total amount of the judgment award is for \$5,931.69, including post-hearing interest and costs (filing fee).

The court's review of the judgment reveals that \$2066 is for back wages from June 24, 2008 through June 18, 2011. See 11 U.S.C. §§ 503(b)(1)(A)(ii), 507(a)(2). In addition, the amount awarded under Labor Code section 203, \$480, is statutorily imposed as wages in the form of a statutory penalty that is based on an employer's failure to pay an employee's wages upon the employee's discharge. Cal. Lab. Code § 201, 203.

CONCLUSION

For the reasons stated above, the court allows the priority portion of Claim No. 11 in the amount of \$2546. The remainder of the claim in the amount of \$3385.69 will be allowed as an unsecured claim.

23. [16-10445](#)-A-13 DONALD/NANCY NEWSOME
VRP-3
DONALD NEWSOME/MV
VARDUHI PETROSYAN/Atty. for dbt.
RESPONSIVE PLEADING
- OBJECTION TO CLAIM OF PYOD,
LLC, CLAIM NUMBER 20
11-18-16 [[31](#)]

No tentative ruling.

24. [16-13752](#)-A-13 GURMIT SANDHU AND KARMIT
GEG-3 BRAR
GURMIT SANDHU/MV
GLEN GATES/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO CONFIRM PLAN
12-1-16 [[35](#)]

No tentative ruling.

25. [16-13752](#)-A-13 GURMIT SANDHU AND KARMIT
MHM-2 BRAR
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.
- OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-7-16 [[45](#)]

Final Ruling

The objection will be overruled as moot given the filing of an amended Schedule C on January 5, 2017.

26. [16-14553](#)-A-13 MANUEL/CAROLE CAMILO MOTION TO EXTEND AUTOMATIC STAY
TCS-1 12-27-16 [[12](#)]
MANUEL CAMILO/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.

27. [16-13054](#)-A-13 ABEL/ANA CARRANZA OBJECTION TO DEBTOR'S CLAIM OF
MHM-2 EXEMPTIONS
MICHAEL MEYER/MV 12-6-16 [[36](#)]
MARK ZIMMERMAN/Atty. for dbt.

Final Ruling

The objection will be overruled as moot given the filing of an amended Schedule C on January 6, 2017.

28. [16-11256](#)-A-13 SAMUEL/DIANE DOMINGUEZ MOTION TO CONFIRM PLAN
FW-8 11-21-16 [[112](#)]
SAMUEL DOMINGUEZ/MV
PETER FEAR/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.

29. [16-11256](#)-A-13 SAMUEL/DIANE DOMINGUEZ MOTION FOR COMPENSATION BY THE
FW-9 LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
12-13-16 [[122](#)]

PETER FEAR/Atty. for dbt.

No tentative ruling.

30. [13-13660](#)-A-13 MICHAEL/VERONICA WHITE MOTION FOR COMPENSATION BY THE
LKW-8 LAW OFFICE OF LEONARD K. WELSH
FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
12-14-16 [[138](#)]

LEONARD WELSH/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, Law Offices of Leonard K. Welsh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3687.50 and reimbursement of expenses in the amount of \$14.80.

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

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

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 \$3687.50 and reimbursement of expenses in the amount of \$14.80. The aggregate allowed amount equals \$3702.30. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3702.30 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.

31. [13-15961](#)-A-13 ROBERT/HOLLY WOODS CONTINUED MOTION TO DISMISS
MHM-3 CASE
MICHAEL MEYER/MV 9-6-16 [[98](#)]
JOSEPH ARNOLD/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

32. [16-14564](#)-A-13 FRANK/REBECCA MARTINEZ MOTION TO EXTEND AUTOMATIC STAY
SL-1 12-22-16 [[8](#)]
FRANK MARTINEZ/MV
SCOTT LYONS/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.

33. [16-13265](#)-A-13 MICHELLE KEVORKIAN
TCS-1
MICHELLE KEVORKIAN/MV

OBJECTION TO CLAIM OF AMERICAN
INFOSOURCE, CLAIM NUMBER 2
AND/OR OBJECTION TO CLAIM OF
AMERICAN INFOSOURCE, CLAIM
NUMBER 3
11-23-16 [[14](#)]

TIMOTHY SPRINGER/Atty. for dbt.
ORDER #34 CONTINUING TO
2/16/17

Final Ruling

Pursuant to Order, ECF #34, the matter is continued to February 16, 2017, at 9:00 a.m.

34. [16-13265](#)-A-13 MICHELLE KEVORKIAN
TCS-2
MICHELLE KEVORKIAN/MV

OBJECTION TO CLAIM OF FRESNO
COUNTY FEDERAL CREDIT UNION,
CLAIM NUMBER 4
11-23-16 [[19](#)]

TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Claim No. 4 Fresno County Federal Credit Union

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

Preliminarily, the court identifies the following disputed, material factual issues: (i) whether approximately \$12,600 of charges on debtor's visa account (held with the claimant) were not authorized by the debtor or were fraudulent charges by a third party, (ii) whether the debtor followed any applicable contractual procedures for disputing such \$12,600 of charges, and whether any such failure imposes liability on the debtor for such charges, and (iii) whether sanctions under 28 U.S.C. § 1927 are warranted.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);

will be required;

(11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

36. [16-14470](#)-A-13 JAYCE/LISA LEWIS
PBB-1
JAYCE LEWIS/MV
PETER BUNTING/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
12-28-16 [[10](#)]

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.

37. [16-13873](#)-A-13 AMALIA ZUNIGA
JRL-1
AMALIA ZUNIGA/MV
JERRY LOWE/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GM FINANCIAL
12-5-16 [[13](#)]

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 2013 Ford Focus. 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 \$8500.

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 2013 Ford Focus has a value of \$8500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$8500 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.

38. [16-11475](#)-A-13 DAVID ALANIS MOTION TO CONFIRM PLAN
CGF-6 11-22-16 [[86](#)]
DAVID ALANIS/MV
CHRISTOPHER FISHER/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

39. [16-11475](#)-A-13 DAVID ALANIS MOTION TO VALUE COLLATERAL OF
CGF-7 FRESNO COUNTY EMPLOYEES FEDERAL
DAVID ALANIS/MV CREDIT UNION
11-22-16 [[95](#)]
CHRISTOPHER FISHER/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

40. [16-11475](#)-A-13 DAVID ALANIS CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 9-7-16 [[55](#)]
CHRISTOPHER FISHER/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

41. [16-14476](#)-A-13 RAUL GUTIERREZ
TOG-1
RAUL GUTIERREZ/MV

MOTION TO IMPOSE AUTOMATIC STAY
AND/OR MOTION TO EXTEND
AUTOMATIC STAY
12-28-16 [[12](#)]

THOMAS GILLIS/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.

42. [11-17092](#)-A-13 KACY JOHNSON
FW-1
KACY JOHNSON/MV

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING, LLC
AND/OR MOTION TO AVOID LIEN OF
OCWEN LOAN SERVICING, LLC
12-13-16 [[153](#)]

PETER FEAR/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 2592 Blackwood Ave., Clovis, CA.

The court values the collateral at \$250,000. 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 2592 Blackwood Ave., Clovis, CA, has a value of \$250,000. 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.

43. [15-13995](#)-A-13 VICTOR/NICHOLAS DE LA MOTION TO MODIFY PLAN
DRJ-3 TORRE 11-28-16 [[38](#)]
VICTOR DE LA TORRE/MV
DAVID JENKINS/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

44. [16-13695](#)-A-13 INPREET SINGH MOTION TO CONFIRM PLAN
JRL-2 11-18-16 [[21](#)]
INPREET SINGH/MV
JERRY LOWE/Atty. for dbt.

No tentative ruling.

45. [16-13695](#)-A-13 INPREET SINGH MOTION TO DISMISS CASE
MHM-2 12-7-16 [[34](#)]
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

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 \$3753.82.

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.