

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

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

**PRE-HEARING DISPOSITIONS**

**DAY: THURSDAY**  
**DATE: MARCH 23, 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. [16-10202](#)-A-13 GUADALUPE NUNEZ AND MOTION TO DISMISS CASE  
MHM-1 ALICIA LOZANO 2-7-17 [[20](#)]  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

2. [16-13304](#)-A-13 GERALD STULLER AND MOTION TO DISMISS CASE  
MHM-2 BARBARA WIKINSON-STULLER 2-10-17 [[53](#)]  
MICHAEL MEYER/MV  
SCOTT SAGARIA/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

3. [16-13304](#)-A-13 GERALD STULLER AND MOTION TO CONFIRM PLAN  
MJD-1 BARBARA WIKINSON-STULLER 1-26-17 [[43](#)]  
GERALD STULLER/MV  
SCOTT SAGARIA/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

4. [16-14304](#)-A-13 TINA MORENO MOTION TO DISMISS CASE  
MHM-1 2-7-17 [[24](#)]  
MICHAEL MEYER/MV  
MICHAEL ARNOLD/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.

**No tentative ruling.**

5. [12-18407](#)-A-13 MICHAEL ELLIS AND JULIE MOTION TO MODIFY PLAN  
PBB-4 GOORABIAN-ELLIS 2-3-17 [[72](#)]  
MICHAEL ELLIS/MV  
PETER BUNTING/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.

6. [16-14023](#)-A-13 RUBEN CHAVEZ AND SOCORRO MOTION TO DISMISS CASE  
MHM-1 VILLEGAS 1-6-17 [[36](#)]  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

7. [17-10031](#)-A-13 JERRYLL SCHREINER MOTION FOR RELIEF FROM  
RCO-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A./MV 2-10-17 [[19](#)]  
JASON KOLBE/Atty. for mv.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

8. [14-14236](#)-A-13 EDGAR SANTANA  
FW-2  
EDGAR SANTANA/MV  
GABRIEL WADDELL/Atty. for dbt.

MOTION TO MODIFY PLAN  
2-2-17 [[41](#)]

**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.

9. [16-14444](#)-A-13 STEVEN WILLIAMS  
MHM-1  
MICHAEL MEYER/MV  
MICHAEL AVANESIAN/Atty. for dbt.

MOTION TO DISMISS CASE  
2-21-17 [[48](#)]

**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.

10. [13-13646](#)-A-13 JANELLE JAMES  
PBB-5  
JANELLE JAMES/MV  
PETER BUNTING/Atty. for dbt.  
DISMISSED

MOTION TO SET ASIDE DISMISSAL  
OF CASE  
3-6-17 [[93](#)]

#### **Tentative Ruling**

**Motion:** Vacate Order Dismissing Chapter 13 Case and Reinstate Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

The debtor has filed a motion to vacate the order dismissing her chapter 13 case and to reinstate her chapter 13 plan that was pending at the time of the dismissal. Her chapter 13 case was dismissed after she failed to pay the full amount of a delinquency under her plan by the deadline stated in a notice sent by the chapter 13 trustee.

Rule 60(b) permits a motion for relief from a judgment or order to be brought within a reasonable time not to exceed one year if the ground for the motion is "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1), *incorporated by* Fed. R. Bankr. P. 9024.

In this case, the debtor's failure to pay the \$1000 remaining under the Notice of Default and Intent to Dismiss (NOID) arose from excusable neglect of the mail carrier. The debtor had previously paid \$2000 of the \$3000 arrearage under the NOID, which was posted to the trustee's account as of January 10, 2017. The day before the payment

deadline, the debtor sent the remaining \$1000 via overnight mail to the trustee's payment center in Tennessee. The mail carrier, UPS, failed to deliver the payment until after the deadline. Because the debtor took every step possible to ensure timely delivery of the payment (by sending via overnight mail), the neglect in paying the remaining amount of the arrearage by the deadline is excusable. Fed. R. Civ. P. 60(b)(1). Relief under Rule 60(b) is not restricted to excusable neglect of the movant. See *id.* The court also notes that the debtor was forced to send the remaining amount of the delinquency under the NOID due to circumstances beyond her control, such as inclement weather that affected the payment of her commission as a grain broker.

11. [16-12147](#)-A-13 ANTONIO/MARIA NAVARRO MOTION TO MODIFY PLAN  
MGG-7 1-30-17 [[89](#)]  
ANTONIO NAVARRO/MV  
MATTHEW GRECH/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

12. [17-10547](#)-A-13 MOHAMMAD KHAN MOTION TO IMPOSE AUTOMATIC STAY  
JRL-1 2-27-17 [[9](#)]  
MOHAMMAD KHAN/MV  
JERRY LOWE/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Impose the Automatic Stay

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

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

**Order:** Prepared by moving party

**STANDARDS FOR IMPOSITION OF THE STAY**

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed." *Id.* (emphases added). However, the motion must be filed no later than 30 days after the filing of the later case. *Id.* The statute does not require the hearing to be completed within such 30-day period.

## **DISCUSSION**

### Opposition

Secured Creditor Bayview Loan Servicing, LLC, as servicing agent for The Bank of New York Mellon, has filed an opposition to the motion. Secured Creditor asserts that it holds the first trust deed against property located at 7310 Plaza Circle, Tahoe Vista, CA 96148. This real property secures a loan in the principal balance of \$560,000.

The original borrower under the Secured Creditor's note and deed of trust is Linda S. Catron, not the debtor. Secured Creditor admits in its opposition that Debtor does not own the subject property and does not have any legal obligation or liability on the secured debt owed to Secured Creditor. Secured Creditor has never looked to the Debtor for payment of the debt.

On February 20, 2017, Secured Creditor alleges that its borrower Catron transferred, via unauthorized grant deed, an undivided 20% interest in Tahoe Vista property to a person with a name Mohammad M. Khan, an unmarried man (Exhibit E).

The opposition is unsupported by any evidence. No declaration was filed in support. The court gives no consideration to the opposition in ruling on the motion.

Even if a declaration had been filed to authenticate the "unauthorized grant deed," the opposition contains no factual allegations support the debtor's participation in the transfer. The opposition makes only conclusory allegations regarding the debtor's "involvement" in the transfer. As a result, even if the unauthorized grant deed had been authenticated, the court has no basis to conclude that the Tahoe Vista property is property of the estate. In addition, the moving party has shown, or even alleged, that the grantee named in the copy of the deed attached as an exhibit is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. In a motion for relief under § 362(d)(4), if a declaration merely recited such conclusory statements about the debtor's "involvement" in the transfer without any specific evidence of that conclusion, the court would unlikely grant relief under § 362(d)(4). (The court would consider an order granting stay relief as to this real property under § 362(d)(1) given that the property is not property of the Debtor's estate and given the existence of a transfer in violation of the loan documents.)

### Imposition of Stay

The court finds that 2 or more cases were pending within the one-year period before the filing of the current bankruptcy case but were dismissed. 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 the motion.

13. [14-12749](#)-A-13 TERESITA DUROY-UMALI  
MJA-1  
TERESITA DUROY-UMALI/MV  
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO AVOID LIEN OF  
RIVERWALK HOLDINGS, LTD  
2-17-17 [[42](#)]

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.



14. [14-12749](#)-A-13 TERESITA DUROY-UMALI MOTION TO AVOID LIEN OF DCFS  
MJA-2 TRUST  
TERESITA DUROY-UMALI/MV 2-17-17 [[47](#)]  
JOSEPH ARNOLD/Atty. for dbt.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

15. [16-13250](#)-A-13 SONYA SIDHU CONTINUED MOTION TO DISMISS  
MHM-3 CASE  
MICHAEL MEYER/MV 1-13-17 [[39](#)]  
TIMOTHY SPRINGER/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
RESPONSIVE PLEADING

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

16. [16-13250](#)-A-13 SONYA SIDHU  
TCS-1  
SONYA SIDHU/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
1-31-17 [[45](#)]

**No tentative ruling.**

17. [17-10250](#)-A-13 SHENG/CHAO VANG  
FW-1  
SHENG VANG/MV  
GABRIEL WADDELL/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF  
SPECIALIZED LOAN SERVICING LLC  
2-23-17 [[17](#)]

**Final Ruling**

**Motion:** Value Collateral

**Notice:** Written opposition filed by the responding party

**Disposition:** Continued to April 27, 2017, at 9:00 a.m.; status report required 14 days before the continued hearing date

**Order:** Civil minute order

The motion seeks to value real property collateral that is the moving party's principal residence. The responding party has requested a continuance to obtain a broker's opinion, appraisal or other evidence of the collateral's value. The court will continue the motion to the date indicated. No later than 14 days before the continued date of the hearing, the parties will file a joint status report.

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

18. [17-10250](#)-A-13 SHENG/CHAO VANG  
FW-2  
SHENG VANG/MV  
GABRIEL WADDELL/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
STATE LABOR COMMISSION  
2-23-17 [[21](#)]

**Final Ruling**

The real property collateral that the debtors move to value in this matter is the same collateral that is the subject of the contested valuation hearing having docket control no. FW-1. To avoid inconsistent orders, the court will continue this hearing to April 27, 2017, at 9:00 a.m., to track with the contested valuation hearing at FW-1.

19. [11-61554](#)-A-13 ISAIAS/MARIA OSORIO  
MHM-4  
MICHAEL MEYER/MV

OBJECTION TO CLAIM OF JPMORGAN  
CHASE BANK, N.A., CLAIM NUMBER  
4  
1-13-17 [[81](#)]

BARBARA SMART/Atty. for dbt.

### **Final Ruling**

**Objection:** Objection to Claim No. 4

**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 JPMorgan Chase Bank, N.A., has returned funds received from the trustee and/or has communicated to the trustee in writing that the balance of its claim (based on a mortgage loan) has been canceled. 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 its return of funds and/or written statements, 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 less the amounts returned by the claimant to the trustee.

The claim will be allowed as: an unsecured claim in the amount of \$648.07. The remaining balance of the claim will be disallowed.

#### **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. 4 is sustained. The court liquidates the amount of the claim at the amount paid by the trustee on the claim less any amounts returned by the claimant. The claim will be allowed as: an unsecured claim in the amount of \$648.07. The remaining balance of the claim will be disallowed.

20. [15-11656](#)-A-13 JOSE/ANA VALENCIA  
PBB-1  
JOSE VALENCIA/MV  
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN  
2-9-17 [[25](#)]

#### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and

3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

21. [17-10157](#)-A-13 MARY HALL

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-22-17 [[14](#)]

### **Tentative Ruling**

If the installment payment of \$79 due February 17, 2017, and the \$77 installment due March 20, 2017, have not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

22. [11-14859](#)-A-13 LUIS/MARIA ALVARADO  
JDM-4  
LUIS ALVARADO/MV

MOTION TO AVOID LIEN OF  
COLLECTIBLES MANAGEMENT  
RESOURCES  
2-8-17 [[69](#)]

JAMES MILLER/Atty. for dbt.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the

purpose of establishing whether the property is listed and claimed as exempt . . . ." *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Although the exemption of \$1.00 was claimed in a pro forma Schedule C attached as an exhibit to the motion, this exhibit has not been filed. The original Schedule C does not claim the exemption in 4730 E. Riverdale Ave., Laton, CA. Accordingly, a prima facie case has not been made for relief under § 522(f).

23. [11-14859](#)-A-13 LUIS/MARIA ALVARADO  
JDM-5  
LUIS ALVARADO/MV  
JAMES MILLER/Atty. for dbt.

MOTION TO AVOID LIEN OF FIA  
CARD SERVICES, NA  
2-13-17 [[75](#)]

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt . . . ." *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor

who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Although the exemption of \$1.00 was claimed in a pro forma Schedule C attached as an exhibit to the motion, this exhibit has not been filed. The original Schedule C does not claim the exemption in 4730 E. Riverdale Ave., Laton, CA. Accordingly, a prima facie case has not been made for relief under § 522(f).

24. [16-14362](#)-A-13 FRANCISCO SANDOVAL  
MHM-2  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE  
3-2-17 [[41](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **CASE DISMISSAL**

The 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.

25. [17-10564](#)-A-13 HARRY/LISA BARDIZBANIAN MOTION TO EXTEND AUTOMATIC STAY  
DRJ-2 3-8-17 [[11](#)]  
HARRY BARDIZBANIAN/MV  
DAVID JENKINS/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.

26. [16-13265](#)-A-13 MICHELLE KEVORKIAN CONTINUED OBJECTION TO CLAIM OF  
TCS-2 FRESNO COUNTY FEDERAL CREDIT  
MICHELLE KEVORKIAN/MV UNION, CLAIM NUMBER 4  
11-23-16 [[19](#)]  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

At the suggestion of the parties, the objection is continued to June 16, 2017, at 9:00 a.m. Not later than 14 days prior to that date, respondent shall file and serve opposition to the objection.



27. [16-13265](#)-A-13 MICHELLE KEVORKIAN  
TCS-3  
MICHELLE KEVORKIAN/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF  
DISCOVER BANK, CLAIM NUMBER 1  
11-23-16 [[23](#)]

### **Final Ruling**

At the suggestion of the parties, the objection is continued to June 16, 2017, at 9:00 a.m. Not later than 14 days prior to that date, respondent shall file and serve opposition to the objection.

28. [15-12666](#)-A-13 JEFFREY MOOSOLIAN  
FW-1

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL,  
DEBTORS ATTORNEY(S)  
2-23-17 [[50](#)]

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 \$7600.00 and reimbursement of expenses in the amount of \$336.28.

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 \$7600.00 and reimbursement of expenses in the amount of \$336.28. The aggregate allowed amount equals \$7936.28. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$7936.28 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

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.

29. [17-10068](#)-A-13 WILLIAM/TRELLA LINLEY  
MHM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
3-6-17 [[14](#)]

JANINE ESQUIVEL/Atty. for dbt.  
WITHDRAWN

### Final Ruling

The objection withdrawn, the matter is dropped as moot.

30. [15-10170](#)-A-13 STEPHEN/KRISTI TOLBERT  
PBB-1  
KRISTI TOLBERT/MV

MOTION FOR EXEMPTION FROM  
FINANCIAL MANAGEMENT COURSE  
AND/OR MOTION TO SUBSTITUTE  
REPRESENTATIVE FOR THE DECEASED  
DEBTOR , MOTION FOR WAIVER OF  
THE SECTION 1328 CERTIFICATE  
REQUIREMENTS FOR DECEASED  
DEBTOR  
2-13-17 [[54](#)]

PETER BUNTING/Atty. for dbt.

### **Final Ruling**

**Motion:** Waiver of Requirement to File § 1328 Certifications

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

**Disposition:** Granted

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

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c).

The debtor named in the motion has died. Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1016-1(b), the court will grant the motion.

The court will authorize further administration of this case as to the deceased debtor, and waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

Furthermore, the court will substitute Kristi Anne Tolbert in the place of the deceased debtor as the deceased debtor's representative or successor.

The operative provisions of the order shall state only the following:  
"It is ordered that the motion is granted as to the deceased debtor.

Plan payments have been completed. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. And the court finds the continued administration of the estate is possible and in the best interests of the parties. The court substitutes Kristi Anne Tolbert in the place of the deceased debtor as the deceased debtor's representative or successor."

31. [16-14670](#)-A-13 ROBERT/STEPHANIE  
MHM-1 FITZGERALD  
OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-17-17 [[12](#)]  
  
PETER BUNTING/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

32. [16-14670](#)-A-13 ROBERT/STEPHANIE  
MHM-2 FITZGERALD  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
WITHDRAWN  
MOTION TO DISMISS CASE  
2-17-17 [[15](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

33. [13-15375](#)-A-13 ROSEMARY GARCIA  
PLG-5  
ROSEMARY GARCIA/MV  
STEVEN ALPERT/Atty. for dbt.  
MOTION TO MODIFY PLAN  
1-30-17 [[111](#)]

**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.

34. [12-11276](#)-A-13 LUIS/CAROLYN HERNANDEZ MOTION FOR COMPENSATION FOR  
BCS-6 BENJAMIN C. SHEIN, DEBTORS  
ATTORNEY(S)  
2-17-17 [[106](#)]

BENJAMIN SHEIN/Atty. for dbt.

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Shein Law Group, 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 \$2375.00 and reimbursement of expenses in the amount of \$130.26. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

### **CIVIL MINUTE ORDER**

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

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

Shein Law Group, 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 \$2375.00 and reimbursement of expenses in the amount of \$130.26. The aggregate allowed amount equals \$2505.26. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2505.26 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.

35. [11-14278](#)-A-12 MANUEL/MARY BARCELOS MOTION FOR ENTRY OF DISCHARGE  
WW-8 2-8-17 [[82](#)]  
MANUEL BARCELOS/MV  
RILEY WALTER/Atty. for dbt.

### **Final Ruling**

**Motion:** Entry of Discharge [Chapter 12 case]

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

**Disposition:** Granted

**Order:** Prepared by the movant

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

The motion requests entry of discharge under § 1228 of the Bankruptcy Code. The court finds that the debtor has completed all payments under the plan in this chapter 12 case. See 11 U.S.C. § 1228(a). The debtor has certified by declaration that the debtor has no domestic support obligations under a judicial or administrative order or statute. See *id.*

Under § 1228(f), the court finds that § 522(q)(1) is inapplicable to the debtor. The court also finds no proceeding is pending in which (1) the debtor may be found guilty of felony of the kind described in § 522(q)(1)(A), or (2) the debtor may be liable for a debt of the kind described in § 522(q)(1)(B). The court finds that a chapter 12 discharge should be entered in this case.

36. [17-10478](#)-A-13 RICHARD/JEANIE ROCHA  
ALG-1  
RICHARD ROCHA/MV

MOTION TO VALUE COLLATERAL OF  
NISSAN MOTOR ACCEPTANCE  
CORPORATION  
2-16-17 [[11](#)]

JANINE ESQUIVEL/Atty. for dbt.

### **Final Ruling**

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

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **VALUATION OF COLLATERAL**

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2013 Nissan Altima. 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 \$11,854.

## 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 Nissan Altima has a value of \$11,854. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$11,854 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.

37. [16-13480](#)-A-13 DANIEL CISNEROS TORRES CONTINUED MOTION TO DISMISS  
MHM-2 AND ANGELINA RODRIGUEZ CASE  
MICHAEL MEYER/MV 1-13-17 [[45](#)]  
SCOTT LYONS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
WITHDRAWN

### Final Ruling

The motion withdrawn, the matter is dropped as moot.

38. [16-13480](#)-A-13 DANIEL CISNEROS TORRES MOTION TO CONFIRM PLAN  
SL-2 AND ANGELINA RODRIGUEZ 1-30-17 [[53](#)]  
DANIEL CISNEROS TORRES/MV  
SCOTT LYONS/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.

39. [14-15882](#)-A-13 DELIA GALLARDO MOTION TO MODIFY PLAN  
JDR-5 2-2-17 [[97](#)]  
DELIA GALLARDO/MV  
JEFFREY ROWE/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.

40. [16-14384](#)-A-13 ROBERT/TAMMY VERONDA MOTION TO DISMISS CASE  
MHM-2 2-22-17 [[22](#)]  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

41. [16-14687](#)-A-13 JAIME GARZA  
EAT-1  
WELLS FARGO BANK, N.A./MV  
THOMAS GILLIS/Atty. for dbt.  
DARLENE VIGIL/Atty. for mv.
- OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
2-10-17 [[13](#)]

**No tentative ruling.**

42. [16-14188](#)-A-13 ANTONIO/MARIA ROMERO  
MHM-1  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
WITHDRAWN
- MOTION TO DISMISS CASE  
2-16-17 [[31](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

43. [16-14188](#)-A-13 ANTONIO/MARIA ROMERO  
MHM-2
- OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
3-6-17 [[38](#)]
- SCOTT LYONS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The objection withdrawn, the matter is dropped as moot.

44. [16-13893](#)-A-13 DAVID/DELIA HAYES  
MHM-1  
MICHAEL MEYER/MV
- CONTINUED MOTION TO DISMISS  
CASE  
12-15-16 [[20](#)]

**Final Ruling**

The motion is continued to May 11, 2017, at 9:00 a.m.

45. [15-13096](#)-A-13 CRYSTAL MONROY CERVANTES MOTION TO COMPROMISE  
FW-4 CONTROVERSY/APPROVE SETTLEMENT  
CRYSTAL MONROY CERVANTES/MV AGREEMENT WITH FUNDING METRICS,  
LLC, DBA QUICK FIX CAPITAL  
2-16-17 [[105](#)]

PETER FEAR/Atty. for dbt.

### **Final Ruling**

**Motion:** Approve Compromise of Controversy

**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).

### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles a preference dispute with Quick Fix Capital. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 109. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

### **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.

Crystal Cervanes's motion to approve a compromise 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 court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 109.

46. [15-13096](#)-A-13 CRYSTAL MONROY CERVANTES MOTION TO COMPROMISE  
FW-5 CONTROVERSY/APPROVE SETTLEMENT  
CRYSTAL MONROY CERVANTES/MV AGREEMENT WITH YELLOWSTONE  
CAPITAL WEST, LLC  
2-16-17 [[111](#)]

PETER FEAR/Atty. for dbt.

### **Final Ruling**

**Motion:** Approve Compromise of Controversy

**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).

### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles preference dispute with Yellowstone Capital West, LLC. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 115. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant A

& C Properties factors. The compromise or settlement will be approved.

#### **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.

Crystal Cervantes's motion to approve a compromise 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 court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 115.

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| 47. | <u>15-13096</u> -A-13 CRYSTAL MONROY CERVANTES<br>FW-6<br>CRYSTAL MONROY CERVANTES/MV | MOTION TO COMPROMISE<br>CONTROVERSY/APPROVE SETTLEMENT<br>AGREEMENT WITH MERCHANT CAPITAL<br>SOURCE, LLC<br>2-16-17 [ <a href="#">117</a> ] |
|-----|---|---|

PETER FEAR/Atty. for dbt.

#### **Final Ruling**

**Motion:** Approve Compromise of Controversy

**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).

#### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the

creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles a preference dispute with Merchant Capital Source, LLC. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 121. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

#### **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.

Crystal Cervantes' motion to approve a compromise 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 court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 121.

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|-----|--|---|
| 48. | <u>16-14697</u> -A-13 JOSE DIAZ AND BLANCA<br>V.F.-1 VILLA<br>HONDA LEASE TRUST/MV<br>THOMAS GILLIS/Atty. for dbt.<br>VINCENT FROUNJIAN/Atty. for mv.<br>WITHDRAWN | OBJECTION TO CONFIRMATION OF<br>PLAN BY HONDA LEASE TRUST<br>2-20-17 [ <a href="#">22</a> ] |
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#### **Final Ruling**

The objection withdrawn, the matter is dropped as moot.

49. [13-17599](#)-A-13 JUAN/CONCEPCION MARTINEZ MOTION TO WAIVE THE SECTION  
BDB-2 1328 CERTIFICATE AND/OR MOTION  
CONCEPCION MARTINEZ/MV TO SUBSTITUTE JOINT DEBTOR AS  
REPRESENTATIVE , MOTION TO  
ADMINISTER CASE  
2-8-17 [[42](#)]

BENNY BARCO/Atty. for dbt.

### **Final Ruling**

**Motion:** Waiver of Requirement to File § 1328 Certifications

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

**Disposition:** Granted

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

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c).

The debtor named in the motion has died. Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1016-1(b), the court will grant the motion.

The court will authorize further administration of this case as to the deceased debtor, and waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

Furthermore, the court will substitute Concepcion Martinez in the place of the deceased debtor as the deceased debtor's representative or successor.

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. Plan payments have been completed. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. And the court finds the continued

administration of the estate is possible and in the best interests of the parties. The court substitutes Concepcion Martinez in the place of the deceased debtor as the deceased debtor's representative or successor."

50. [16-14699](#)-A-13 OFELIA GARCIA  
MHM-1  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.

MOTION TO DISMISS CASE  
2-15-17 [[15](#)]

**No tentative ruling.**