

**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
DATE: APRIL 15, 2020
CALENDAR: 3:00 P.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [20-10201](#)-A-13 **IN RE: COREY/HENRY ALLEN RALSTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-26-2020 [[33](#)]

SCOTT LYONS/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

2. [19-14904](#)-A-13 **IN RE: CHRISTINE BOHLANDER**
[PLG-2](#)

MOTION TO VALUE COLLATERAL OF TOYOTA MOTOR CREDIT
CORPORATION
3-11-2020 [[35](#)]

CHRISTINE BOHLANDER/MV
STEVEN ALPERT/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 2015 Toyota Corolla. 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 \$9,109.31.

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 2015 Toyota Corolla has a value of \$9,109.31. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9,109.31 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.

3. [20-10318](#)-A-13 **IN RE: JOSE GONZALEZ AND ITALIA DE LOZA**
[MHM-2](#)

MOTION TO DISMISS CASE
3-13-2020 [[18](#)]

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.

No Ruling

4. [15-10135](#)-A-13 **IN RE: SERGIO/IRMA PIZARRO**
[MHM-2](#)

MOTION TO DISMISS CASE
3-9-2020 [[56](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

5. [19-15353](#)-A-13 **IN RE: JUAN/MABEL LOPEZ**
[FAT-1](#)

MOTION TO CONFIRM PLAN
2-21-2020 [[23](#)]

JUAN LOPEZ/MV
FLOR DE MARIA TATAJE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The case having been dismissed by order of this court, ECF No. 45, the court will drop the motion as moot.

6. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-14](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
WANGER JONES HELSLEY PC FOR RILEY C. WALTER, DEBTORS
ATTORNEY(S)
11-27-2019 [[96](#)]

RILEY WALTER/ATTY. FOR DBT.

No Ruling

7. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-4](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN
9-5-2019 [[68](#)]

FRANK FAGUNDES/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

8. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-4](#)

MOTION TO CONFIRM CHAPTER 12 PLAN
2-27-2020 [[139](#)]

FRANK FAGUNDES/MV
RILEY WALTER/ATTY. FOR DBT.

No Ruling

9. [20-10157](#)-A-13 **IN RE: CATALINA GARCIA**
[SLL-1](#)

AMENDED MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK,
DEBTORS ATTORNEY(S)
3-14-2020 [[28](#)]

CATALINA GARCIA/MV
STEPHEN LABIAK/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, Stephen Labiak has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5,940.00 and reimbursement of expenses in the amount of \$56.20.

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

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

Stephen Labiak'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 \$5,940.00 and reimbursement of expenses in the amount of \$56.20. The aggregate allowed amount equals \$5,996.20. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5,996.20 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.

10. [19-13376](#)-A-13 **IN RE: OPAL RIDER**
[SLL-1](#)

CONTINUED AMENDED OBJECTION TO CLAIM OF WRCOG ENERGY
EFFICIENCY AND WATER CONSERVATION PROGRAM FOR WESTERN
RIVERSIDE COUNTY, CLAIM NUMBER 3-1
11-4-2019 [\[36\]](#)

OPAL RIDER/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

11. [19-12678](#)-A-13 **IN RE: ANTONIO HERNANDEZ SILVA**
[JDR-2](#)

CONTINUED MOTION TO MODIFY PLAN
1-30-2020 [\[57\]](#)

ANTONIO HERNANDEZ SILVA/MV
JEFFREY ROWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This modified plan having been confirmed on April 7, 2020, the court will drop this matter from the calendar as moot.

12. [14-16093](#)-A-13 **IN RE: ERIC FELDMAN**
[MHM-1](#)

MOTION TO DISMISS CASE
3-9-2020 [\[88\]](#)

MICHAEL MEYER/MV
JERRY LOWE/ATTY. FOR DBT.

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$798.13. The debtor's plan is nearly complete and only \$798.13 is necessary to complete the case.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

13. [18-15097](#)-A-13 **IN RE: ERIC/ELIZABETH AYALA**
[TCS-2](#)

MOTION TO MODIFY PLAN
2-28-2020 [\[32\]](#)

ERIC AYALA/MV
TIMOTHY SPRINGER/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 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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.