

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: MAY 3, 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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [16-13302](#)-A-13 LUIS ORTEGA AND NANCY CONTINUED MOTION TO DISMISS
MHM-1 NUNEZ CASE
MICHAEL MEYER/MV 2-2-17 [[42](#)]
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The trustee moved to dismiss based on failure to confirm a plan. The plan has been confirmed on this calendar. The motion is denied as moot.

2. [16-13302](#)-A-13 LUIS ORTEGA AND NANCY MOTION TO CONFIRM PLAN
PK-2 NUNEZ 2-22-17 [[52](#)]
LUIS ORTEGA/MV
PATRICK KAVANAGH/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.

3. [17-10102](#)-A-13 JASON CAUDILL
MHM-1
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO DISMISS CASE
3-13-17 [[16](#)]

Final Ruling

Motion: Dismiss Chapter 13 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

Section 1308 of the Bankruptcy Code provides: "Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a).

The debtor has failed to comply with this tax-filing requirement. The debtor failed to file his 2016 state and federal tax returns. The court will dismiss this case pursuant to § 1307(e).

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 based on the debtor's failure to comply with 11 U.S.C. § 1308(a)'s tax-filing requirement. The court hereby dismisses this case.

4. [12-12204](#)-A-13 MICHAEL/FELIZA LETOURNEAU MOTION FOR COMPENSATION BY THE
KDG-6 LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIEB &
KIMBALL, LLP FOR JACOB L.
EATON, DEBTORS ATTORNEY(S)
3-31-17 [[118](#)]

JACOB EATON/Atty. for dbt.

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved in part, denied in part

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).

RELIEF REQUESTED

Klein DeNatale prays (1) additional compensation of \$14,402.50 and costs of \$0.00; (2) finalization of interim fees of \$17,809.80 and costs of \$780.30, Memorandum, February 14, 2013, ECF # 111; (3) authorization for Michael H. Meyer to pay \$9,049.41 from "funds on hand"; and (4) authorization for the debtors to pay \$5,353.09 and \$0.00 costs.

COMPENSATION AND EXPENSES

In this Chapter 13 case, Klein DeNatale has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$14,402.50 and reimbursement of expenses in the amount of \$0.00. 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. Memorandum, February 14, 2013, ECF # 111.

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. Though high, the court notes a voluntary reduction of fees during this application period of \$10,753.00. 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.

PAYMENT BY TRUSTEE FROM FUNDS NOT YET DISTRIBUTED

The court declines the movant's request to instruct the Chapter 13 trustee to pay the fees approved from the \$9,049.41 "on hand." Chapter 13 plans bind. 11 U.S.C. § 1327(a); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272-75 (2010).

Here, the debtors have confirmed a plan. Chapter 13 plan, filed July 30, 2012, ECF # 72; Order, October 9, 2012, ECF # 81. The amount available for payment of administrative expenses (including debtor's counsel's fees) is set forth in the plan. Order § 2.07, October 9, 2012, ECF # 81. It provides for payments of \$1,258.16 per month in months 1-2 of the plan and \$2,127.31 per month for months 3-13 of the plan. *Id.* That amount is to be share with other administrative expense claimants. Chapter 13 plan § 4.03, July 30, 2012, ECF # 72. If funds the trustee continues to hold funds earmarked for administrative expense payment, the trustee is already authorized to pay them to the movant. If not, plan modification, if possible, would be required to alter the distribution scheme.

PAYMENT BY DEBTOR DIRECTLY AND DISCHARGE

There are two issues here: direct payment and discharge. As to payment directly by the debtors, the plan provides for presumptive payment by the Chapter 13 trustee. See Chapter 13 plan § 2.07. In the pertinent part, that section provides "Approved administrative expenses shall be paid in full through this plan **except to the extent a claimant agrees otherwise** or 11 U.S.C § 1326(b) (3) (B)." Because the movant, Klein DeNatale has agreed otherwise, direct payment by the debtor is recognized by the plan.

But payment must occur before the discharge issues. Section 1328(a) provides for the discharge "of all debtor provided for by the plan" and then enumerates exceptions not applicable here. Debtor's counsel's fees are provided for by the plan. The debtor's plan provides, "**Class 5 consists of unsecured claims entitled to priority** pursuant to 11 U.S.C. § 507. **These claims will be paid in full** except to the extent the claim holder has agreed to accept less or 11 U.S.C. § 1322(a) (4) is applicable." Chapter 13 plan § 2.13, July 30, 2012, ECF # 72. (emphasis original and added). Neither of the exceptions apply. Moreover, the plan does not except attorney fees from discharge in the additional provisions. *Wolff v. Johnson (In re Johnson)*, 344 B.R. 104 (2006). As a consequence, fees unpaid at the time of the discharge order issues will be discharged.

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.

Klein DeNatale'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 \$14,402.50 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$14,402.50. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$14,402.50 shall be allowed as an administrative expense to be paid through the plan, if funds are available, 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. 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.

IT IS FURTHER ORDERED that all other relief is denied.

5. [17-10012](#)-A-13 MICHAEL SPRINGSTEAD MOTION TO DISMISS CASE
 MHM-1 3-14-17 [[20](#)]
 MICHAEL MEYER/MV
 ROBERT WILLIAMS/Atty. for dbt.
 RESPONSIVE PLEADING

No tentative ruling.

6. [17-10012](#)-A-13 MICHAEL SPRINGSTEAD MOTION TO SELL
 RSW-2 4-19-17 [[34](#)]
 MICHAEL SPRINGSTEAD/MV
 ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

7. [16-12618](#)-A-13 PAUL/JACKIE PENA MOTION TO DISMISS CASE
 MHM-4 3-29-17 [[68](#)]
 MICHAEL MEYER/MV
 PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

The trustee has moved to dismiss for failure to lodge a confirmation order, LBR 3015-1(e). The debtors have opposed. The hearing on this motion to dismiss will be continued to June 7, 2017, at 9:00 a.m. to coincide with the hearing on the debtor's motion to modify the plan.

8. [17-10021](#)-A-13 TERRY/MAUREEN HENDERSON MOTION TO DISMISS CASE
MHM-1 3-13-17 [[24](#)]
MICHAEL MEYER/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [17-10221](#)-A-13 CARLOS/ROSARIO MAGANA MOTION TO DISMISS CASE
MHM-1 3-13-17 [[13](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [17-10731](#)-A-13 SOPHIA GUILLEN ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-5-17 [[20](#)]

Tentative Ruling

Order to Show Cause: Dismissal of Case for Failure to Pay Fees

Date Issued: April 5, 2017

Disposition: Case Dismissed

Order: Civil minute order

The debtor has failed to pay one or more installments of the filing or administrative fees according to the schedule specified in an order granting the debtor leave to pay such fees in installments. If the debtor has not paid all past due installments of filing or administrative fees by the date of the hearing, then the court will order that the case be dismissed.

11. [17-10731](#)-A-13 SOPHIA GUILLEN
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
4-10-17 [[22](#)]

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(2); no 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 debtors have failed to provide credit counseling certificates. With exceptions not applicable here, an individual cannot be a debtor under Title 11 unless such individual has received credit counseling as prescribed by § 109(h)(1). Credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

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

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

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.

12. [17-10034](#)-A-13 VIRGILIO/YOLANDA SERCENA CONTINUED OBJECTION TO
BOSCO CREDIT II, LLC/MV CONFIRMATION OF PLAN BY BOSCOE
CREDIT II, LLC
3-3-17 [[14](#)]
ROBERT WILLIAMS/Atty. for dbt.
MICHELLE GHIDOTTI-GONSALVES/Atty. for mv.

No tentative ruling.

13. [17-10034](#)-A-13 VIRGILIO/YOLANDA SERCENA MOTION TO VALUE COLLATERAL OF
RSW-1 CITY IN THE HILLS MASTER
VIRGILIO SERCENA/MV ASSOCIATION
4-12-17 [[22](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: LBR 9014-1(f) (2); no 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). 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 5513 Tapia Court, Bakersfield, CA.

The court values the collateral at \$346,320. 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 5513 Tapia Court, Bakersfield, CA has a value of \$346,320. 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.

14. [17-10034](#)-A-13 VIRGILIO/YOLANDA SERCENA MOTION TO VALUE COLLATERAL OF
RSW-2 LTCV HOMEOWNERS ASSOCIATION
VIRGILIO SERCENA/MV 4-12-17 [[27](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: LBR 9014-1(f)(2); no 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). 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 5513 Tapia Court, Bakersfield, CA.

The court values the collateral at \$346,320. 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 5513 Tapia Court, Bakersfield, CA, has a value of \$346,320. 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.

15. [17-10034](#)-A-13 VIRGILIO/YOLANDA SERCENA MOTION TO AVOID LIEN OF CITY IN
RSW-3 THE HILLS MASTER/LTCV HOA
VIRGILIO SERCENA/MV 4-12-17 [[32](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$536,401.02

Property Value: \$346,320

Judicial Lien Avoided: \$2177.64

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).

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.

16. [17-10234](#)-A-13 LUCIA/MICHAEL LOPEZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-31-17 [[34](#)]
DISMISSED

Final Ruling

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

17. [16-13338](#)-A-13 MIGUEL/ADRIANA GONZALEZ MOTION TO CONFIRM PLAN
PK-1 3-9-17 [[70](#)]
MIGUEL GONZALEZ/MV
PATRICK KAVANAGH/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.

18. [16-14440](#)-A-13 THOMAS/JENNIFER HERNANDEZ MOTION TO CONFIRM PLAN
RSW-1 3-2-17 [[14](#)]
THOMAS HERNANDEZ/MV
ROBERT WILLIAMS/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

19. [17-10749](#)-A-13 FRANK GARZOLI OBJECTION TO CONFIRMATION OF
SW-1 PLAN BY ALLY FINANCIAL INC.
ALLY FINANCIAL INC./MV 4-10-17 [[15](#)]
ROBERT WILLIAMS/Atty. for dbt.
ADAM BARASCH/Atty. for mv.
ALLY FINANCIAL INC. VS.

No tentative ruling.

20. [17-10368](#)-A-13 ODESSA NEWMAN-STAPLES MOTION TO DISMISS CASE
MHM-1 3-23-17 [[12](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [11-62772](#)-A-13 JOHN/BETH NEMETH MOTION TO CONVERT CASE FROM
MHM-5 CHAPTER 13 TO CHAPTER 7
3-27-17 [[387](#)]
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

22. [11-62772](#)-A-13 JOHN/BETH NEMETH CONTINUED MOTION TO MODIFY PLAN
PWG-8 10-26-16 [[338](#)]
JOHN NEMETH/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

23. [16-14075](#)-A-13 JOSE ALBERT MOTION TO CONFIRM PLAN
RSW-3 3-13-17 [[31](#)]
JOSE ALBERT/MV
ROBERT WILLIAMS/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.

24. [11-63685](#)-A-13 TRACY/KARI HUBBELL MOTION TO DISMISS CASE
MHM-1 3-10-17 [[31](#)]
MICHAEL MEYER/MV
D. GARDNER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [17-10185](#)-A-13 WILLIAM RICHARDSON MOTION TO VALUE COLLATERAL OF
PK-1 WHEELS FINANCIAL GROUP, LLC
WILLIAM RICHARDSON/MV 4-11-17 [[28](#)]
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral

Notice: Written opposition filed by the responding party

Disposition: Continued to June 7, 2017, at 9:00 a.m. with a joint status report filed no later than May 25, 2017

Order: Civil minute order

The motion seeks to value a vehicle (2007 Toyota Camry) that is the responding party's collateral. The responding party has requested a continuance to obtain an appraisal. The court will continue the motion to the date indicated. No later than May 25, 2017, 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 valuation must be resolved before the court can rule on the relief requested.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to May 25, 2017, at 9:00 a.m. No later than May 25, 2017, the parties shall file a joint status report.

26. [16-14688](#)-A-13 JEREMY/SHIRRELL COOK
WSL-1
JEREMY COOK/MV
GREGORY SHANFELD/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
3-22-17 [[25](#)]

No tentative ruling.