

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

2500 Tulare Street, Fifth Floor  
Department A, Courtroom 11  
Fresno, California

**WEDNESDAY**

**July 2, 2014**

**PRE-HEARING DISPOSITIONS**

**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.

**MATTERS RESOLVED BEFORE HEARING**

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

**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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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.

9:00 a.m.

1. [14-10502](#)-A-13 GUADALUPE/MARIA CASTILLO  
MHM-2  
MICHAEL MEYER/MV  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-4-14 [[38](#)]
- THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

2. [13-18105](#)-A-13 CRAIG/SHEREE ALTOBELLE  
MHM-3  
MICHAEL MEYER/MV  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
5-14-14 [[42](#)]
- SCOTT LYONS/Atty. for dbt.

**No tentative ruling.**

3. [13-18105](#)-A-13 CRAIG/SHEREE ALTOBELLE  
MHM-4  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
5-30-14 [[46](#)]

**No tentative ruling.**

4. [09-61806](#)-A-13 PATRICK/BARBARA  
PLF-6 RIDDLESPRIGER  
MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR LAW GROUP,  
P.C. FOR PETER L. FEAR,  
DEBTOR'S ATTORNEY(S)  
5-20-14 [[75](#)]
- PETER FEAR/Atty. for dbt.

**Final Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Fear Law Group, P.C.

**Compensation approved:** \$1534.50 (in addition to the \$3500 flat fee paid in accordance with LBR 2016-1(c)).

**Costs approved:** \$506.50

**Aggregate fees and costs approved in this application:** \$2041.00

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$2041.00

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 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.

5. [14-10511](#)-A-13 SEAN SALEHI  
SJS-2  
SEAN SALEHI/MV  
SUSAN SALEHI/Atty. for dbt.

MOTION TO CONFIRM PLAN  
5-6-14 [[33](#)]

#### **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 Chapter 13 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.

6. [13-13912](#)-A-13 LUIS/RUBY BURGOS CONTINUED MOTION OF  
MICHAEL MEYER/MV NON-COMPLIANCE AND REQUEST TO  
RE-ISSUE COURT'S ORDER TO SHOW  
CAUSE  
12-20-13 [[50](#)]  
THOMAS GILLIS/Atty. for dbt.  
DISMISSED

**No tentative ruling.**

7. [13-13912](#)-A-13 LUIS/RUBY BURGOS MOTION FOR COMPENSATION FOR  
TOG-15 THOMAS O. GILLIS, DEBTOR'S  
ATTORNEY(S)  
5-28-14 [[78](#)]  
THOMAS GILLIS/Atty. for dbt.  
DISMISSED

**No tentative ruling.**

8. [14-11515](#)-A-13 RICHARD/JUDEE MARTINEZ MOTION TO DISMISS CASE FOR  
MHM-1 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 5-30-14 [[17](#)]  
PETER BUNTING/Atty. for dbt.

**No tentative ruling.**

9. [14-10218](#)-A-13 JESUS CASTELLANO AND MOTION TO VALUE COLLATERAL OF  
JDW-4 ANGIE VEGA PACIFIC SERVICES CREDIT UNION  
JESUS CASTELLANO/MV 5-8-14 [[37](#)]  
JOEL WINTER/Atty. for dbt.

**Final Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by the moving party consistent with this ruling's instructions

**Collateral Value:** \$14,515

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).

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).

The motion names Pacific Services Credit Union as the respondent in the title of the motion and in the motion's first paragraph, and the proof shows service on this entity. But the prayer for relief seeks valuation of Ford Motor Credit's collateral. The court will treat this inconsistency in the prayer as a typographical error and value the collateral of the entity served and named in the motion's title and first paragraph, Pacific Services Credit Union.

In this case, the debtor seeks to value collateral consisting of a motor vehicle. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. In the absence of any opposition to the motion, the court finds that the replacement value of the vehicle is the amount set forth above.

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in an amount equal to the value of the collateral shown above and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

10. [13-16020](#)-A-13 BLANCA MARTINEZ  
MHM-2  
MICHAEL MEYER/MV

THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO CONVERT  
CASE FROM CHAPTER 13 TO CHAPTER  
7 AND/OR MOTION TO DISMISS CASE  
11-26-13 [42]

### **Final Ruling**

The case dismissed, the motion is denied as moot.

11. [13-16020](#)-A-13 BLANCA MARTINEZ CONTINUED OBJECTION TO DEBTOR'S  
MHM-3 CLAIM OF EXEMPTIONS  
MICHAEL MEYER/MV 12-4-13 [[50](#)]  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

The case dismissed, the motion is denied as moot.

12. [13-16020](#)-A-13 BLANCA MARTINEZ MOTION TO DISMISS CASE AND WITH  
UST-1 180-DAY BAR  
TRACY DAVIS/MV 5-28-14 [[149](#)]  
THOMAS GILLIS/Atty. for dbt.  
GREGORY POWELL/Atty. for mv.

**Final Ruling**

The motion resolved by stipulation and the case dismissed, this matter is dropped as moot.

13. [14-11820](#)-A-13 TONY/CARMEN BAIZA MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-4-14 [[41](#)]  
SCOTT LYONS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, this matter is dropped as moot.

14. [14-10422](#)-A-13 MANUEL/RISSY MONTOYA MOTION TO DISMISS CASE FOR  
MHM-2 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS ,  
MOTION TO DISMISS CASE  
6-6-14 [[56](#)]  
ADRIAN WILLIAMS/Atty. for dbt.

**No tentative ruling.**

15. [13-15728](#)-A-13 WADE WILLIAMS  
MHM-4  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
5-8-14 [[205](#)]

BRIAN HADDIX/Atty. for dbt.

**No tentative ruling.**

16. [14-11032](#)-A-13 GLICERIO/PINILI GUZMAN  
TCS-1  
GLICERIO GUZMAN/MV

MOTION TO VALUE COLLATERAL OF  
WASHINGTON MUTUAL BANK, FA  
AND/OR MOTION TO VALUE  
COLLATERAL OF JPMORGAN CHASE  
BANK, N.A. , MOTION TO VALUE  
COLLATERAL OF CHASE MANHATTAN  
MORTGAGE CORPORATION  
5-22-14 [[19](#)]

TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Prepared by the moving party consistent with this ruling's  
instructions

**Collateral Value:** \$167,057.00

**Senior Liens:** \$182,943.00

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).

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). 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 responding party'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.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

17. [14-11233](#)-A-13 ALAN PATTERSON  
MHM-1  
MARK ZIMMERMAN/Atty. for dbt.
- OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
5-30-14 [[31](#)]

**Final Ruling**

This matter is continued to July 31, 2014, at 9:00 a.m.

18. [10-60542](#)-A-13 ALFONSO/JOSEFINA BECERRA  
MHM-2  
MICHAEL MEYER/MV  
CHERYL JOLLEY-SMITH/Atty. for dbt.  
WITHDRAWN
- OBJECTION TO DEBTORS 11 U.S.C.  
SEC. 1328 CERTIFICATION BY  
MICHAEL H. MEYER  
5-23-14 [[86](#)]

**Final Ruling**

The objection withdrawn, this matter is dropped as moot.

19. [10-10550](#)-A-13 MITCHELL/SHARRON THORNTON  
PLF-9  
PETER FEAR/Atty. for dbt.
- MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR LAW GROUP,  
P.C. FOR PETER L. FEAR,  
DEBTOR'S ATTORNEY(S)  
5-21-14 [[103](#)]

**Final Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Fear Law Group, P.C.

**Compensation approved:** \$2065.50 (in addition to the \$5000 flat fee paid in accordance with LBR 2016-1(c))

**Costs approved:** \$902.35

**Aggregate fees and costs approved in this application:** \$2967.85

**Retainer held:** \$0.00



**Amount to be paid as administrative expense:** \$2967.85 (in addition to \$3000 paid by the trustee through the plan as part of applicant's opt-in fee)

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 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.

20. [14-11553](#)-A-13 MATTHEW/ANGELA KNOTT  
MHM-1  
MICHAEL MEYER/MV  
JAMES MILLER/Atty. for dbt.  
WITHDRAWN  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
5-30-14 [[18](#)]

**Final Ruling**

The motion withdrawn, this matter is dropped as moot.

21. [14-10854](#)-A-13 TIMOTHY/MIJHA LEASURE  
MHM-2  
MICHAEL MEYER/MV  
MARK ZIMMERMAN/Atty. for dbt.  
RESPONSIVE PLEADING  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
5-30-14 [[40](#)]

**No tentative ruling.**

22. [14-10855](#)-A-13 ELISEO OROZCO  
MHM-1  
MICHAEL MEYER/MV  
JEFFREY ROWE/Atty. for dbt.  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-5-14 [[26](#)]

**No tentative ruling.**

23. [14-11857](#)-A-13 HAN/IN KIM  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-4-14 [[46](#)]

H. AHN/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

24. [12-17966](#)-A-13 ISMAEL RAMIREZ  
PLG-2  
ISMAEL RAMIREZ/MV  
FRANK RUGGIER/Atty. for dbt.

MOTION TO SELL  
6-12-14 [[51](#)]

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Property:** 38 Marrion Avenue, Salinas, CA

**Buyer:** Unidentified

**Sale Price:** \$280,000

**Sale Type:** Private sale subject to overbid opportunity

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303.

Confirmation of a Chapter 13 plan reverts property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the debtor's confirmed plan provides that property of the estate shall revert in debtors upon confirmation. Although the court in general does not authorize sales of non-estate property, § 363(b)(1), the confirmed plan in this case imposes a duty on the debtor to obtain prior court authorization before transferring property. 1st Am. Ch. 13 Plan at § 5.02.

The court will deny the motion without prejudice on procedural grounds. The motion and notice of hearing does not identify the proposed buyer, and the notice does not state that the sale is subject to overbid at the hearing. The notice of a proposed private sale should contain all material terms and conditions of the sale. *See* Fed. R. Bankr. P. 2002(c)(1) (requiring the terms and conditions of any private sale be included in the notice of hearing); *see also* LBR 9014-1(d)(4). The names of the parties—including the proposed buyer—are material terms of the sale. Conditioning a sale on the opportunity for higher and better bids is a material term of any

private sale because it may substantially alter the price term and change the identity of the buyer.

Additionally, the moving party did not provide a sufficient period of notice of the proposed sale. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires not less than 21 days' notice of a proposed use, sale or lease of property of the estate other than in the ordinary course of business unless the court shortens the time for notice for cause. The motion was served on June 12, 2014. To provide 21 days' notice of the hearing, the motion should have been served on June 11, 2014.

25. [13-17668](#)-A-13 JULIAN/ANN SALINAS  
MHM-2  
MICHAEL MEYER/MV  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-4-14 [[78](#)]
- GARY HUSS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

26. [14-11968](#)-A-13 FERNANDO POO AND PALOMA  
MHM-1 HERNANDEZ  
MICHAEL MEYER/MV  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-4-14 [[33](#)]
- THOMAS GILLIS/Atty. for dbt.

**No tentative ruling.**

27. [14-11968](#)-A-13 FERNANDO POO AND PALOMA  
TOG-4 HERNANDEZ  
FERNANDO POO/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING  
MOTION TO CONFIRM PLAN  
5-14-14 [[19](#)]

**Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

## CONFIRMATION

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

## 75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

28. [11-62072](#)-A-13 FRANK/PATRICIA PADILLA MOTION FOR COMPENSATION BY THE  
PLF-3 LAW OFFICE OF PETER L. FEAR FOR  
PETER L. FEAR, DEBTOR'S  
ATTORNEY(S)  
5-20-14 [[46](#)]

PETER FEAR/Atty. for dbt.

## Final Ruling

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Law Offices of Peter L. Fear

**Compensation approved:** \$1939.00

**Costs approved:** \$138.69

**Aggregate fees and costs approved in this application:** \$2077.69

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$2077.69

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 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. The moving party is authorized to draw on any retainer held.

29. [13-16274](#)-A-13 JOSEPH DESROSIERS  
MHM-4  
MICHAEL MEYER/MV  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-2-14 [[105](#)]
- JERRY LOWE/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

30. [12-15180](#)-A-13 LUIS/KELLIE LUJAN  
PLG-3  
LUIS LUJAN/MV  
RABIN POURNAZARIAN/Atty. for dbt.  
RESPONSIVE PLEADING  
MOTION TO MODIFY PLAN  
5-9-14 [[58](#)]

**Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

31. [13-16084](#)-A-13 JOHN/NANCY ALVA  
TCS-2  
JOHN ALVA/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
5-12-14 [[40](#)]

### **Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

32. [14-11897](#)-A-13 JUSTINO LEON  
RCO-1  
THE BANK OF NEW YORK MELLON/MV

OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
6-17-14 [[30](#)]

SCOTT LYONS/Atty. for dbt.  
KRISTI WELLS/Atty. for mv.

### **Tentative Ruling**

**Matter:** Creditor's Objection to Confirmation of Plan and Motion to Dismiss

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Objection overruled; motion to dismiss denied

**Order:** Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

### **OBJECTION TO CONFIRMATION**

When the chapter 13 plan is filed within 14 days of the petition and no motion to confirm is required, see LBR 3015-1(c)(1), the court's local rules require an objection to plan confirmation to be filed and served within 7 days after the first date set for the meeting of creditors, see LBR 3015-1(c)(4). The notice of the meeting of creditors includes notice of this deadline.

The meeting of creditors in this case was on May 27, 2014. The deadline for filing an objection to confirmation was June 3, 2014. But the objection was filed two weeks late. It was filed on July 17, 2014 and served on the same date. The court will overrule this objection as untimely.

### **MOTION TO DISMISS**

In the prayer for relief, the creditor moves for dismissal of this case. The creditor has not filed a motion, though, and a motion is required by the Federal Rules of Bankruptcy Procedure when a request for an order is made. See Fed. R. Bankr. P. 9013, 9014(a). The objection procedure applicable to confirmation does not suffice for a motion. Fed. R. Bankr. P. 3015(f).

In addition, a motion may not be joined to an objection absent leave of court. Rule 7018, which incorporates the permissive joinder rule of Rule 18 of the Federal Rules of Civil Procedure, does not apply to contested matters, see Fed. R. Bankr. P. 9014(c) unless orders otherwise. The motion, therefore, was improperly joined to the objection and will be denied on this procedural ground.

Even if the court were to find that the motion were properly joined, the creditor has given no grounds for such relief. Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds. If the court were to consider the motion to dismiss, then the court would find that the motion does not

state with particularity the grounds for the relief requested. The grounds of the objection are stated to support a denial of confirmation, and these grounds are not expressly stated as supporting dismissal. Although the argument that the debtor has unreasonably delayed curing the arrearage could be construed as a ground for dismissal under § 1307(c)(1), the creditor has not offered facts showing that the delay is unreasonable, especially when the Code permits a plan to cure such defaults within a reasonable time, and the court has not denied confirmation on that ground.

33. [10-64699](#)-A-13 RONALD/JENNIFER SLOCUM ORDER TO SHOW CAUSE - FAILURE  
TO TENDER FEE FOR FILING  
TRANSFER OF CLAIM ECF NO. 50  
(EFILINGID: 5180758)  
6-5-14 [[65](#)]

TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

If all fees are not paid as of the hearing date, the court will strike the transfer of claim filed by BAC Home Loans Servicing LP from its docket.

34. [13-15181](#)-A-13 LINDSAY LEMONS MOTION TO COMPEL AND/OR MOTION  
GEG-2 FOR SANCTIONS , MOTION FOR  
WAYNE STORMS/MV EXTENSION OF DISCOVERY DATES  
AND TRIAL DATE  
6-30-14 [[171](#)]

SCOTT LYONS/Atty. for dbt.  
GLEN GATES/Atty. for mv.

**No tentative ruling.**

**9:30 a.m.**

1. [09-16160](#)-A-13 JUAN HURTADO CONTINUED STATUS CONFERENCE RE:  
[11-1102](#) AMENDED COMPLAINT  
JONES V. HURTADO 6-16-14 [[203](#)]  
SCOTT BURTON/Atty. for pl.

**No tentative ruling.**