

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street
Department A, Courtroom 11
Fresno, California

FRIDAY

JULY 17, 2015

9:00 A.M. CHAPTERS 13 AND 12 CASES

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.

1. [11-60105](#)-A-13 PORFIRIO/SANDRA GARZA MOTION FOR HARDSHIP DISCHARGE
GMA-3 6-18-15 [[55](#)]
PORFIRIO GARZA/MV
GEOFFREY ADALIAN/Atty. for dbt.

Tentative Ruling

Motion: Motion for Hardship Discharge in Chapter 13

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

Disposition: Granted

Order: Prepared by the movant and approved by the trustee as to form and content

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 court has reviewed the motion. The debtors have made the requisite showing to support the entry of a chapter 13 hardship discharge pursuant to § 1328(b)(1)-(3).

2. [15-10807](#)-A-13 DAVID MOSQUEDA OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
6-19-15 [[29](#)]

SCOTT LYONS/Atty. for dbt.

No tentative ruling

3. [13-18013](#)-A-13 MADELINE MEDINA MOTION TO MODIFY PLAN
PBB-2 5-27-15 [[63](#)]
MADELINE MEDINA/MV
PETER BUNTING/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the matter is dropped from calendar as moot.

4. [13-15714](#)-A-13 LEONARD TURK AND BETTY MOTION TO DISMISS CASE
MHM-1 HALSTEAD-TURK 5-15-15 [[30](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

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).

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 \$2000.

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. Payments are delinquent in the amount of \$2000. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

5.	<u>13-14616</u> -A-13 ROXANA MARTINEZ MHM-1 MICHAEL MEYER/MV DAVID JENKINS/Atty. for dbt. WITHDRAWN	MOTION TO DISMISS CASE 5-15-15 [48]
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Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

6.	<u>15-10916</u> -A-13 LURLINE TUCKER PBB-2 LURLINE TUCKER/MV PETER BUNTING/Atty. for dbt.	MOTION TO CONFIRM PLAN 5-27-15 [25]
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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.

7. [15-10916](#)-A-13 LURLINE TUCKER
PBB-3
LURLINE TUCKER/MV

MOTION TO VALUE COLLATERAL OF
FRESNO COUNTY FEDERAL CREDIT
UNION
6-1-15 [[33](#)]

PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Motion for Order Approving Agreement to Value Judicial Lien

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).

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 debtor requests approval of a compromise that settles a dispute between the debtor and Fresno County Federal Credit Union (FCU) regarding the value of the debtor's real property located at 1724 West Cornell Avenue, Fresno, CA, for purposes of determining

whether FCU's lien is avoidable under § 522(f), and regarding the treatment of FCU's claim under the debtor's plan. Both FCU and the debtor assert different valuations of the real property in good faith. Under the settlement, the parties agree, *inter alia*, that FCU's judgment lien shall remain in place until completion of this chapter 13 case, that the debtor shall amend Schedule A to reflect the value of the real property at \$112,000 and file a modified plan providing for treatment of the FCU secured claim as secured in the amount of \$2000 to be paid in Class 2 with interest at 2.5%, and that FCU shall amend its claim to show a claim secured by the debtor's real property in the amount of \$2000 with interest at 2.5% and the balance of FCU's claim as unsecured.

The compromise is reflected in the settlement agreement attached to the motion as Exhibit B and filed at docket no. 36. 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.

8. [11-14917](#)-A-13 LARRY/DIANA LOGUE
CJO-1
GREEN TREE SERVICING LLC/MV

CONTINUED MOTION FOR CONSENT TO
ENTER INTO LOAN MODIFICATION
AGREEMENT
6-8-15 [[130](#)]

M. ENMARK/Atty. for dbt.
CHRISTINA O/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling

9. [14-13418](#)-A-13 ROBERT/LUCERO BISHOP
MHM-4
MICHAEL MEYER/MV
SUSAN HEMB/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
5-28-15 [[75](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

10. [14-13418](#)-A-13 ROBERT/LUCERO BISHOP
SAH-1
ROBERT BISHOP/MV
SUSAN HEMB/Atty. for dbt.

MOTION TO CONFIRM PLAN
6-9-15 [[79](#)]

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

The moving party did not provide a sufficient period of notice of the hearing on the motion or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 2002(b) requires not less than 28

days' notice of the time fixed for filing objections and the hearing to consider confirmation of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 42 days' notice of the motion. LBR 3015-1(d). Creditors and parties in interest received less than 28 days' notice of the time fixed for filing objections, and the motion and notice of hearing were filed and served less than 42 days before the hearing.

11. [10-16120](#)-A-13 CARL/ELAINE SCHMIDT
PBB-2
CARL SCHMIDT/MV

MOTION FOR WAIVER OF
JOINT-DEBTOR'S 1328 CERTIFICATE
REQUIREMENT FOR ENTRY OF
DISCHARGE BASED ON THE DEATH OF
SAID JOINT-DEBTOR
6-24-15 [[49](#)]

PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

Notice: LBR 9014-1(f)(2); no 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). 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."

The court finds that further administration is possible and in the best interests of the debtor and creditors in this case as no creditor or party in interest has presented grounds for dismissing the case or denying the waiver requested. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1001-1(f), the court will grant the motion 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.

The order shall state only the following: "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."

12. [10-16423](#)-A-13 MARGARITO/LINDA GAMEZ
PLF-6

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP,
PC FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
5-22-15 [[112](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Law Group has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$9,677.00 and reimbursement of expenses in the amount of \$752.79. 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, including no look fees.

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, including no look fees, that the court has allowed under § 331 on an interim basis.

CIVIL MINUTE ORDER

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

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

Fear Law Group'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 \$9,677.00 and reimbursement of expenses in the amount of \$752.79. The aggregate allowed amount equals \$10,429.79. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$10,429.79 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. 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, including no look fees.

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.

13. [10-16423](#)-A-13 MARGARITO/LINDA GAMEZ MOTION TO MODIFY PLAN
PLF-7 5-22-15 [[116](#)]
MARGARITO GAMEZ/MV
PETER FEAR/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 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)(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.

14. [12-18123](#)-A-13 GREGORY/DAWN WILLIAMS
HMH-2
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
5-20-15 [[48](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

15. [15-10424](#)-A-13 JAYCE/LISA LEWIS
JRL-1
JAYCE LEWIS/MV
JERRY LOWE/Atty. for dbt.

OBJECTION TO CLAIM OF CHRYSLER
CAPITAL, CLAIM NUMBER 1
6-8-15 [[30](#)]

Tentative Ruling

Objection: Objection to Claim No. 1

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Continued for an evidentiary hearing

Order: Prepared by objecting party

The debtors object to the allowance of Claim No. 1 filed by respondent Santander Consumer USA INC, d/b/a Chrysler Capital. The basis of the objection is that the claim is overstated significantly given the debtors' payments on the claim in a previous chapter 13 bankruptcy case. Respondent opposes the sustaining of the objection alleging that all trustee disbursements have been accounted for.

The payment history attached by Respondent (unauthenticated) does not clearly support the assertion that Respondent's claim amount is accurate and valid. If admitted, the exhibit may only support Respondent's own accounting of the transactions, charges, payments, and interest on the account, and not the accuracy or appropriateness of such accounting. The pages attached as Exhibit C appear to have at least some duplicate entries, and the entries are not in chronological order. The document requires testimony of a person with knowledge if it is to be used as evidence. But the court will not decide the admissibility or weight of this exhibit at this time, leaving such an issue to a future evidentiary hearing.

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material factual issues: (i) whether the amount of Respondent's secured claim is \$28,775.17 (as shown on Claim No. 1) or whether its claim is a different amount; (ii) whether the Respondent has accounted for all past payments made by the debtors; (iii) whether Respondent has properly charged interest and any other amounts to debtors account.

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

(1) all relief sought and the grounds for such relief;
(2) the disputed factual or legal issues;
(3) the undisputed factual or legal issues;
(4) whether discovery is necessary or waived;
(5) the deadline for Rule 26(a)(1)(A) initial disclosures;
(6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
(7) the deadline for the close of discovery;
(8) whether the alternate-direct testimony procedure will be used;
(9) the deadlines for any dispositive motions or evidentiary motions;
(10) the dates for the evidentiary hearing and the trial time that will be required;
(11) any other such matters as may be necessary or expedient to the resolution of these issues.

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

16. [10-62631](#)-A-13 NORBERT SOUSA DUARTE MOTION TO DISMISS CASE
MHM-2 5-14-15 [[73](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

17. [15-11231](#)-A-13 ISIAIAH/JENNIFER ISLAS OMNIBUS OBJECTION TO CLAIMS
ACW-1 5-26-15 [[28](#)]
ISIAIAH ISLAS/MV
ANDY WARSHAW/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Overruled without prejudice

Order: Civil minute order

PROCEDURAL ISSUE

The debtors object to the allowance of Claim Nos. 4 and 5 filed by the respondents filing such claims. The debtor has filed an omnibus objection. The omnibus objection does not meet the procedural requirements of Rule 3007(d). The were not claims filed by the same entity, and the objections are not based solely on the grounds that the claims should be disallowed, in whole or in part, for one of the reasons specified in Rule 3007(d)(1)-(8).

The objection states the conclusion in the first paragraph that "the Debtor is unable to ascertain the validity of the claims based on Claimants' failure to comply with applicable rules." This assertion

on its face would appear to bring the omnibus objection within the scope of Rule 3007(d)(6). However, after reading the objection, no factual detail is given to support this assertion. In fact, the substance of the objection is based on other grounds entirely—whether the debtors are permitted to separately classify the claims filed by respondent creditors and pay them as long-term debt pursuant to § 1322(b)(5). The court will overrule the objection for the reasons discussed.

CIVIL MINUTE ORDER

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

The debtors' omnibus objection to claim nos. 4 and 5 has been presented to the court. Given the procedural deficiency noted by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

18. 15-11231 -A-13 ISIAIAH/JENNIFER ISLAS ACW-2 ISIAIAH ISLAS/MV ANDY WARSHAW/Atty. for dbt.	MOTION TO VALUE COLLATERAL OF GM FINANCIAL 5-26-15 [39]
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Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Disposition: Continued to August 20, 2015, at 9:00 a.m.

Order: Civil minute order

COLLATERAL VALUATION

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. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6). To show that the hanging paragraph is inapplicable, the motion and declaration could, for example, show, if applicable, that the security interest is not a purchase money security interest or that the debt was not incurred within the 910 day period preceding the petition date. Factual information relevant to the hanging paragraph of § 1325(a) is an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

SUPPLEMENTAL DECLARATION

The court will continue the hearing to allow a supplemental declaration to be filed addressing the court's concerns. The hearing will be continued to August 20, 2015, at 9:00 a.m. A notice of continued hearing shall be filed and served upon the respondent pursuant to LBR 9014-1(f)(1) no later than 28 days before the continued hearing date. The notice of continued hearing shall permit opposition to be in writing and filed and served no later than 14 days before the continued hearing date.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the motion is continued to August 20, 2015, at 9:00 a.m. A notice of continued hearing shall be filed and served upon the respondent creditor pursuant to LBR 9014-1(f)(1) no later than 28 days before the continued hearing date. The notice of continued hearing shall permit opposition to be in writing and filed and served no later than 14 days before the continued hearing date.

19. [15-11231](#)-A-13 ISIAIAH/JENNIFER ISLAS MOTION TO CONFIRM PLAN
ACW-3 5-26-15 [[33](#)]
ISIAIAH ISLAS/MV
ANDY WARSHAW/Atty. for dbt.

Final Ruling

Because the motion to value collateral in this case has not been finally adjudicated, the court will continue the hearing on confirmation to August 20, 2015, to coincide with the hearing on the motion to value collateral.

20. [10-63832](#)-A-13 YAKDAN AL QAISI AND SARWA MOTION TO DISMISS CASE
MHM-4 ALDOORI 5-20-15 [[88](#)]
MICHAEL MEYER/MV
SHANE REICH/Atty. for dbt.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

21. [12-11032](#)-A-13 ERIC/ADRIENNE BURNS MOTION FOR COMPENSATION BY THE
BCS-3 LAW OFFICE OF FISHMAN, LARSEN &
CALLISTER FOR BENJAMIN C.
SHEIN, DEBTORS ATTORNEY(S)
6-12-15 [[59](#)]

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, Fishman, Larsen & Callister has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3,521.50 and reimbursement of expenses in the amount of \$106.80. 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.

Fishman, Larsen & Callister'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 \$3,521.50 and reimbursement of expenses in the amount of \$106.80. The aggregate allowed amount equals \$3,628.30. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3,628.30 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. 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.

22. [15-11835](#)-A-13 JAMES/JAMIE CANNON MOTION TO SELL
RSW-1 7-2-15 [[48](#)]
JAMES CANNON/MV
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling

23. [13-16737](#)-A-13 CECELIA TRIMBLE-KELLEY MOTION TO INCUR DEBT
MAZ-1 6-23-15 [[25](#)]
CECELIA TRIMBLE-KELLEY/MV
MARK ZIMMERMAN/Atty. for dbt.

Tentative Ruling

Motion: Approve Debtor's Incurring New Debt [Vehicle Loan]

Notice: LBR 9014-1(f)(2); no 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). 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 seeks to incur new debt to finance the purchase of a vehicle. The purchase is necessary because the debtor needs an operating vehicle for transportation to work as well as for personal

use. Amended Schedule J has been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

24. [10-61240](#)-A-13 JOE/PHYLLIS MANCEBO MOTION TO DISMISS CASE
MHM-1 5-14-15 [[51](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

25. [13-16940](#)-A-13 ALBERT MITCHELL MOTION TO MODIFY PLAN
PBB-1 6-1-15 [[17](#)]
ALBERT MITCHELL/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 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)(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.

26. [12-15942](#)-A-13 LINDA LANEY MOTION TO DISMISS CASE
MHM-2 5-14-15 [[32](#)]
MICHAEL MEYER/MV
STEPHEN LABIAK/Atty. for dbt.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

27. [15-12143](#)-A-13 RICHARD ROBLES
BHT-1
WELLS FARGO BANK, NATIONAL
ASSOCIATION/MV
BRIAN TRAN/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-12-15 [[13](#)]

Final Ruling

The case dismissed, the matter is dropped from calendar as moot.

28. [14-13544](#)-A-13 ISELA TERAN
JES-2
JAMES SALVEN/MV

THOMAS GILLIS/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, CHAPTER 7
TRUSTEE(S)
6-10-15 [[58](#)]

Final Ruling

Application: Allowance of Final Compensation to a Former Chapter 7
Trustee

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

Disposition: Continued to August 20, at 9:00 a.m.

Order: Prepared by applicant

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, applicant James E. Salven was the former
Chapter 7 trustee in this case before it was converted to a case under
Chapter 13. The applicant has applied for an allowance of
compensation in the amount of \$2725.00 and reimbursement of expenses
in the amount of \$70.10.

Chapter 7 trustees are entitled to compensation for their work in a
case under Chapter 7 that is converted to a case under Chapter 13. *In*
re Hages, 252 B.R. 789, 794-95, 797-99 (Bankr. N.D. Cal. 2000).
Subject to the statutory cap of § 326(a) of the Bankruptcy Code, *id.*
at 795, "a chapter 7 trustee's compensation should be determined
independently under § 330," *id.* at 798. Section 330 authorizes
"reasonable compensation for actual, necessary services." 11 U.S.C. §
330(a)(1). Reasonable compensation is determined by considering all
relevant factors. *See id.* § 330(a)(3). Such amount is paid pro rata
with other administrative expenses out of each distribution made by
the Chapter 13 trustee. *See id.* §§ 503(b)(2), 507(a)(2), 1322(a)(2),
1326(b)(1).

In addition, "it is entirely appropriate to impute the moneys that will be distributed by the chapter 13 trustee to the chapter 7 trustee for purposes of computing the maximum fee the chapter 7 trustee can charge, and allowing interim fees up to that maximum." *In re Hages*, 252 B.R. at 794. The amount of anticipated plan payments, rather than actual plan payments, may be used as the basis for calculating the maximum trustee's fee under § 326(a). *Id.* at 793-94.

The court finds that the compensation sought is reasonable; however, such compensation must not exceed the cap in § 326(a). The amount of all moneys actually disbursed has not been discussed in the application. Nor has the application discussed what happens if no money has yet been disbursed. The court will continue the hearing so that the chapter 7 trustee can provide information to allow a conclusion that the requested amounts do not, in the aggregate, exceed the § 326(a) cap.

CIVIL MINUTE ORDER

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

IT IS ORDERED THAT the hearing is continued to August 20, 2015, at 9:00 a.m. A supplemental declaration and brief may be filed no later than August 6, 2015.

29. [14-13544](#)-A-13 ISELA TERAN
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
6-23-15 [[62](#)]

THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained

Order: Civil minute order

CONFIRMATION OF PLAN

The trustee has objected to confirmation on several grounds. The debtor has indicated the debtor does not dispute the objection filed by the trustee to confirmation of the debtor's plan. The debtor indicates an amended plan will be filed addressing the issues raised by the trustee.

One of the grounds for the objection is that the debtor is not satisfying liquidation value, § 1325(a)(4). The trustee also notes that the debtor has not complied with the trustee's requests for documents relating to assets of the estate. The debtor effectively concedes this point by not opposing the objection. The court will sustain the objection and deny confirmation of the plan.

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).

CIVIL MINUTE ORDER

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

The chapter 13 trustee's objection to confirmation has been presented to the court. The trustee has objected to confirmation and the debtor has filed a non-opposition to the objection. Having considered the trustee's grounds for objection as established by the debtor's non-opposition,

IT IS ORDERED that the objection is sustained. Confirmation is denied without prejudice.

IT IS FURTHER ORDERED that 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).

30. [15-11744](#)-A-13 GABRIEL HERNANDEZ AND MOTION TO CONFIRM PLAN
TOG-1 SONIA ALARCON 5-23-15 [[23](#)]
GABRIEL HERNANDEZ/MV
THOMAS GILLIS/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 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.

31. [13-13646](#)-A-13 JANELLE JAMES
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
5-15-15 [[53](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

32. [13-10447](#)-A-13 JARRED/OLIVIA PIGG
MHM-1
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
5-15-15 [[108](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

33. [10-60549](#)-A-13 ROBERT/SANDRA FREEDENBURG
PLF-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
6-2-15 [[49](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear 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 \$1908.50 and reimbursement of expenses in the amount of \$162.05.

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.

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 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 \$1908.50 and reimbursement of expenses in the amount of \$162.05. The aggregate allowed amount equals \$2070.55, and this amount is in addition to the amount of \$3500 approved as part of plan confirmation pursuant to LBR 2016-1(c). As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2070.55 shall be allowed as an administrative expense to be paid through the plan, and in the event that funds of the trustee are unavailable to pay such amount, the applicant will receive such lesser amount that is available.

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.

34. [14-14151](#)-A-13 SALVADOR/MADELINE NAVARRO MOTION FOR COMPENSATION FOR
FLG-2 PETER L. FEAR, DEBTORS
ATTORNEY(S)
6-9-15 [[53](#)]

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 Law Group has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5,508.00 and reimbursement of expenses in the amount of \$396.16.

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 Law Group'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 \$5,508.00 and reimbursement of expenses in the amount of \$396.16. The aggregate allowed amount equals \$5,904.16. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5,904.16 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.

35. [13-17056](#)-A-13 CHRIS/MICHELLE LINHARES ASW-1 MOTION FOR COMPENSATION BY THE LAW OFFICE OF THE LAW OFFICE OF ADRIAN S. WILLIAMS FOR ADRIAN S. WILLIAMS, DEBTORS ATTORNEY(S)
6-1-15 [[23](#)]

ADRIAN WILLIAMS/Atty. for dbt.

No tentative ruling

36. [12-17562](#)-A-13 DENNIS/LAURIE WAGNER JMA-5 MOTION TO MODIFY PLAN
5-20-15 [[80](#)]
DENNIS WAGNER/MV
JOSEPH ARNOLD/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 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)(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.

37. [10-18465](#)-A-13 REYES/CECILIA QUINONEZ MHM-3 MOTION TO DISMISS CASE
5-14-15 [[86](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

38. [10-18465](#)-A-13 REYES/CECILIA QUINONEZ MOTION TO DISMISS CASE
MHM-4 5-14-15 [[93](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

39. [12-15065](#)-A-13 JUAN RICO RIVERA AND ORDER TO SHOW CAUSE - FAILURE
MARIA RICO TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
6-15-15 [[37](#)]

TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

An Assignment / Transfer of Claim from Bank of America, N.A. to Nationstar Mortgage, LLC was filed on the court's docket without payment of the filing fee for such a document required by 28 U.S.C. § 1930(b). If the filing fee for the transfer of claim filed at Docket No. 32 has not been paid as of the hearing date, the court will order that the transfer of claim that was filed be stricken from its docket.

40. [15-10765](#)-A-13 JOSE/ANGELINA ROMERO MOTION TO VALUE COLLATERAL OF
TOG-3 WELLS FARGO BANK, N.A.
JOSE ROMERO/MV 5-29-15 [[34](#)]
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party.

First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 1836 Estes Ave., Corcoran, CA.

The court values the collateral at \$76,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 1836 Estes Ave., Corcoran, CA, has a value of \$76,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

41. [12-10166](#)-A-13 CATALINA MENDOZA
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
5-14-15 [[42](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

42. [15-10967](#)-A-13 NIGEL MARIN

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-29-15 [[52](#)]

Final Ruling

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

43. [15-10967](#)-A-13 NIGEL MARIN
MHM-1
MICHAEL MEYER/MV
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
5-18-15 [[38](#)]

No tentative ruling

44. [14-14572](#)-A-13 ALFREDO/GRACIE LAZO
JRL-2
ALFREDO LAZO/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
6-10-15 [[50](#)]

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.

45. [13-14773](#)-A-13 VICTOR FIGUEROA
MHM-5
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
5-15-15 [[82](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that debtor is delinquent in the amount of \$3,651.67.

The debtor's opposition to the motion admits the existence of a delinquency in the amount of \$1401.67, explaining that debtors made two payments totaling \$2250 since the trustee filed the motion to dismiss and that the remaining balance of \$1401.67 will be paid prior to the hearing on July 17, 2015.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

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 considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

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. Payments are delinquent in the amount of \$1401.67. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

46. [12-15074](#)-A-13 RAMON MONTEJANO-NAVA AND
MHM-2 GLORIA MONTEJANO
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
5-14-15 [[49](#)]

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).

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 \$3161.59.

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. Payments are delinquent in the amount of \$3161.59. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

47. [10-63277](#)-A-12 DELVIN/DEBORAH GEORGESON MOTION TO DISMISS CASE
MNE-3 5-27-15 [[69](#)]
M. ENMARK/MV
HILTON RYDER/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Chapter 12 Case

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

Disposition: Pending

Order: Pending

The chapter 12 trustee Nelson Enmark has moved to dismiss this chapter 12 case for a failure to make payments. Enmark states that the delinquency is \$51,508.70 due to the debtors' failure to make the December 31, 2014 plan payment.

The debtors oppose the motion. They indicate that significant lease and crop revenue will be received in fall and winter of 2015. The debtors lease two large parcels that they own free and clear. The lease payments respectively are \$43,000 payable on December 31, 2015 and \$26,000 payable on December 31, 2015.

The crop revenue from raisins is estimated at \$84,000, and the crop is

also held free and clear. Debtors propose to use the proceeds from the crop to bring the plan current.

They state that they will have sufficient funds in December 2015 from rent to make the payment due December 2015, which payment will complete their plan.

48. [11-11178](#)-A-13 ISRAEL/NENITA GADDI MOTION FOR HARDSHIP DISCHARGE
FJG-1 5-30-15 [[56](#)]
ISRAEL GADDI/MV
F. GIST/Atty. for dbt.

Tentative Ruling

Motion: Motion for Hardship Discharge in Chapter 13

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

Disposition: Continued to August 12, 2015, at 9:00 a.m.

Order: Civil minute order

HARDSHIP DISCHARGE

Based on its review of the motion, the court concludes that the debtors have not made a sufficient showing under § 1328(b)(2) and (3) that they are entitled to a hardship discharge. The court will continue the hearing to August 12, 2015, at 9:00 a.m. to permit the debtors to supplement the record as to these issues.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the motion is continued to August 12, 2015, at 9:00 a.m.

49. [11-11178](#)-A-13 ISRAEL/NENITA GADDI CONTINUED MOTION TO DISMISS
MHM-2 CASE
MICHAEL MEYER/MV 4-8-15 [[39](#)]
F. GIST/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 12, 2015, at 9:00 a.m.

Order: Civil minute order

DISMISSAL OF CASE

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$3940.

Previously, the hearing on the motion was continued to coincide with the hearing on the debtor's motion for a hardship discharge under § 1328(b). The court will again continue the hearing on this matter to August 12, 2015, at 9:00 a.m. to coincide with the hearing on the debtor's motion for a hardship discharge.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the motion is continued to August 12, 2015, at 9:00 a.m.

50. [14-14478](#)-A-13 APRIL MAXFIELD
FLG-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
6-10-15 [[53](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear 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 \$3236.50 and reimbursement of expenses in the amount of \$465.50.

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.

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 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 \$3236.50 and reimbursement of expenses in the amount of \$465.50. The aggregate allowed amount equals \$3702.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3702.00 shall be allowed as an administrative expense to be paid through the plan.

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.

51. [14-15879](#)-A-13 VIRGINIA MOORE
MHM-2
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
6-2-15 [[54](#)]

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).

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 \$3503.82.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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. Payments are delinquent in the amount of \$3503.82. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

52. [11-15284](#)-A-13 ROBERT/STACIE GABIJAN MOTION TO INCUR DEBT
SL-4 6-19-15 [[61](#)]
ROBERT GABIJAN/MV
STEPHEN LABIAK/Atty. for dbt.

Tentative Ruling

Motion: Approve New Debt [New Home Loan]

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 seeks to incur new debt to finance the purchase of a new home. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

53. [11-16885](#)-A-13 DAVID/DELIA HAYES MOTION BY BENJAMIN C. SHEIN TO
BCS-3 WITHDRAW AS ATTORNEY
DAVID HAYES/MV 6-19-15 [[94](#)]
BENJAMIN SHEIN/Atty. for dbt.

No tentative ruling

54. [11-16885](#)-A-13 DAVID/DELIA HAYES MOTION FOR COMPENSATION BY THE
BCS-4 LAW OFFICE OF FISHMAN, LARSEN,
AND CALLISTER FOR BENJAMIN C.
SHEIN, DEBTORS ATTORNEY(S)
6-25-15 [[102](#)]
BENJAMIN SHEIN/Atty. for dbt.

Tentative Ruling

Application: Compensation and Expenses

Disposition: Denied without prejudice

Order: Civil minute order

Fed. R. Civ. P. 2002(c)(2) requires a notice of hearing to identify the applicant and the amounts requested. The notice of hearing does not contain the amounts of compensation and expenses requested in the application. Further, the application, was not transmitted to creditors, so only the notice was. LBR 9014-1(d)(5) (service of notice only). Because of this insufficiency, the court cannot grant the motion at this time.

55. [11-16885](#)-A-13 DAVID/DELIA HAYES CONTINUED MOTION TO DISMISS
MHM-4 CASE
MICHAEL MEYER/MV 4-7-15 [[66](#)]
BENJAMIN SHEIN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling

56. [15-12091](#)-A-13 MARICELA NIEBLAS ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-30-15 [[28](#)]
FRANCISCO ALDANA/Atty. for dbt.

Tentative Ruling

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

Date Issued: June 30, 2015

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.

57. [15-12091](#)-A-13 MARICELA NIEBLAS MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
FEDERAL NATIONAL MORTGAGE 6-11-15 [[15](#)]
ASSOCIATION/MV
FRANCISCO ALDANA/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1334 Ohio St., Porterville, CA

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 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

58. [14-14193](#)-A-13 TINA MCCOMB MOTION TO DISMISS CASE
MHM-1 5-15-15 [[30](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

59. [14-14793](#)-A-13 PATRICIA ZUNIGA MOTION FOR COMPENSATION FOR
JES-3 JAMES E. SALVEN, CHAPTER 7
JAMES SALVEN/MV TRUSTEE(S)
6-10-15 [[110](#)]
SCOTT LYONS/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

Application: Allowance of Final Compensation to a Former Chapter 7 Trustee

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

Disposition: Continued to August 20, 2015, at 9:00 a.m.

Order: Prepared by applicant

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, applicant James E. Salven was the former Chapter 7 trustee in this case before it was converted to a case under Chapter 13. The applicant has applied for an allowance of

compensation in the amount of \$2250 and reimbursement of expenses in the amount of \$132.70.

Chapter 7 trustees are entitled to compensation for their work in a case under Chapter 7 that is converted to a case under Chapter 13. *In re Hages*, 252 B.R. 789, 794-95, 797-99 (Bankr. N.D. Cal. 2000). Subject to the statutory cap of § 326(a) of the Bankruptcy Code, *id.* at 795, "a chapter 7 trustee's compensation should be determined independently under § 330," *id.* at 798. Section 330 authorizes "reasonable compensation for actual, necessary services." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). Such amount is paid pro rata with other administrative expenses out of each distribution made by the Chapter 13 trustee. See *id.* §§ 503(b)(2), 507(a)(2), 1322(a)(2), 1326(b)(1).

In addition, "it is entirely appropriate to impute the moneys that will be distributed by the chapter 13 trustee to the chapter 7 trustee for purposes of computing the maximum fee the chapter 7 trustee can charge, and allowing interim fees up to that maximum." *In re Hages*, 252 B.R. at 794. The amount of anticipated plan payments, rather than actual plan payments, may be used as the basis for calculating the maximum trustee's fee under § 326(a). *Id.* at 793-94.

Salven has submitted time records showing services performed and a narrative explaining assets and value that the trustee discovered for the estate. Based on the total time spent, Salven's total fees are \$3700 at a rate of \$250.00 per hour. However, 4.6 hours were spent after the case was converted, which results in a reduction in fees based on actual time spent of about \$1150, for total fees (based on time spent) of \$2550.

Salven has also reduced his fee request to \$2250 given the statutory cap in § 326. The application does not discuss moneys actually disbursed in the case (whether in chapter 7 or chapter 13). Nor does the application discuss what approach should be used if no moneys have been disbursed.

CIVIL MINUTE ORDER

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

IT IS ORDERED THAT the hearing is continued to August 20, 2015, at 9:00 a.m. A supplemental declaration and brief may be filed no later than August 6, 2015.

60. [13-16197](#)-A-13 CYD SIMIONE
CJY-1
CYD SIMIONE/MV
CHRISTIAN YOUNGER/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
6-12-15 [\[41\]](#)

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party according 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).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement or other declaratory relief. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

61. [14-13899](#)-A-13 MIGUEL FLOREZ
MHM-3
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
5-15-15 [[52](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.