

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

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

PRE-HEARING DISPOSITIONS

DAY: FRIDAY

DATE: JULY 19, 2019

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

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

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

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

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

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

1. [19-10702](#)-A-13 **IN RE: PATRICIA PIZANO**
[MHM-2](#)

MOTION TO DISMISS CASE
5-30-2019 [\[28\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

2. [19-10702](#)-A-13 **IN RE: PATRICIA PIZANO**
[TOG-1](#)

MOTION TO CONFIRM PLAN
6-6-2019 [\[32\]](#)

PATRICIA PIZANO/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

3. [19-11502](#)-A-13 **IN RE: RANDY ADAMS**
[MHM-1](#)

MOTION TO DISMISS CASE
6-18-2019 [[13](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

4. [19-11702](#)-A-13 **IN RE: JOSE MORALES**
[MHM-1](#)

MOTION TO DISMISS CASE
6-11-2019 [[19](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

No Ruling

5. [19-10306](#)-A-13 **IN RE: ISELA BAUTISTA**
[MHM-4](#)

MOTION TO DISMISS CASE
5-22-2019 [[43](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

6. [19-10306](#)-A-13 **IN RE: ISELA BAUTISTA**
[TOG-1](#)

MOTION TO CONFIRM PLAN
6-4-2019 [\[47\]](#)

ISELA BAUTISTA/MV
THOMAS GILLIS

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

7. [19-11706](#)-A-13 **IN RE: LUIS/ROSALINDA MARTINEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
6-7-2019 [\[13\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

8. [19-11510](#)-A-13 **IN RE: LINDA GLOSSOP**
[MHM-2](#)

MOTION TO DISMISS CASE
6-5-2019 [\[16\]](#)

MICHAEL MEYER/MV
PETER BUNTING

No Ruling

9. [19-11810](#)-A-13 **IN RE: ROBERT/ROBIN OCHOA**
[MHM-1](#)

MOTION TO DISMISS CASE
6-11-2019 [\[22\]](#)

MICHAEL MEYER/MV
NICHOLAS ANIOTZBEHERE
RESPONSIVE PLEADING

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

10. [19-11810](#)-A-13 **IN RE: ROBERT/ROBIN OCHOA**
[NEA-1](#)

MOTION TO CONFIRM PLAN
6-12-2019 [\[26\]](#)

ROBERT OCHOA/MV
NICHOLAS ANIOTZBEHERE

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local

Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

11. [18-10112](#)-A-13 **IN RE: CHRISTIPHER/MELISSA BROOKS
NES-1**

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS
ATTORNEY(S)
6-18-2019 [\[19\]](#)

NEIL SCHWARTZ

Final Ruling

Application: Allowance of First 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 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Office of Neil Schwartz has applied for an allowance of a first interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$4,335 and reimbursement of expenses in the amount of \$426.

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.

Neil Schwartz's application for allowance of first 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 \$4,335 and reimbursement of expenses in the amount of \$426. The aggregate allowed amount equals \$4,761. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4,761 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.

12. [19-11913](#)-A-13 **IN RE: JOSE VITOLAS**
[MHM-2](#)

MOTION TO DISMISS CASE
6-6-2019 [\[26\]](#)

MICHAEL MEYER/MV
JAMES CANALEZ
RESPONSIVE PLEADING

No Ruling

13. [19-11515](#)-A-13 **IN RE: KARL KENNEL**
[MHM-2](#)

MOTION TO DISMISS CASE
6-6-2019 [\[30\]](#)

MICHAEL MEYER/MV
SCOTT LYONS
WITHDRAWN

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

14. [14-13417](#)-A-12 **IN RE: DIMAS/ROSA COELHO**
[TCS-12](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR
VIOLATION OF THE DISCHARGE INJUNCTION
6-19-2019 [\[159\]](#)

DIMAS COELHO/MV
NANCY KLEPAC
ORDER CONTINUING TO 8/14/19

Final Ruling

The matter was continued to August 14, 2019 at 3:00 p.m. in
Courtroom 11, Fifth Floor, 2500 Tulare Street, Fresno, California by
Order dated July 4, 2019, ECF #164.

15. [17-11817](#)-A-13 **IN RE: KEVIN ROBERTS**
[SAH-2](#)

MOTION TO MODIFY PLAN
6-4-2019 [\[38\]](#)

KEVIN ROBERTS/MV
SUSAN HEMB
WITHDRAWN

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

16. [18-15119](#)-A-13 **IN RE: MARIA ECHEVERRIA**
[SL-1](#)

MOTION TO MODIFY PLAN
6-3-2019 [\[20\]](#)

MARIA ECHEVERRIA/MV
STEPHEN LABIAK
RESPONSIVE PLEADING

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

17. [17-12220](#)-A-13 **IN RE: KRISTOPHER FRANZEN AND VIRGINIA**
GONZALEZ-FRANZEN
[NES-1](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS
ATTORNEY(S)
6-18-2019 [\[34\]](#)

NEIL SCHWARTZ

Final Ruling

Application: Allowance of First 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 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Offices of Neil Schwartz has applied for an allowance of a first interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$6,232.50 and reimbursement of expenses in the amount of \$419.

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.

Neil Schwartz's application for allowance of first 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 \$6,232.50 and reimbursement of expenses in the amount of \$419. The aggregate allowed amount equals \$6,651.50. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$6,651.50 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.

18. [17-10828](#)-A-13 **IN RE: ALYSIA FLORES-FRANCO**
[PBB-1](#)

OBJECTION TO CLAIM OF DEPARTMENT OF TREASURY-INTERNAL
REVENUE SERVICE, CLAIM NUMBER 1
5-15-2019 [\[21\]](#)

ALYSIA FLORES-FRANCO/MV
PETER BUNTING

Tentative Ruling

Objection: Objection to Proof of Claim 1-1

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

Disposition: Overruled

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor objects to the allowance of general unsecured Proof of Claim No. 1-2 in the amount of \$4,090.28 filed by the claimant the IRS. The court will overrule the objection for the reasons discussed.

Section 502(a) provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). A claim must be disallowed if it is unenforceable under applicable nonbankruptcy law. See 11 U.S.C. § 502(b)(1); *accord Diamant v. Kasparian (In re S. Cal. Plastics, Inc.)*, 165 F.3d 1243, 1247 (9th Cir. 1999).

Federal Rule of Bankruptcy Procedure 3001(f) prescribes the evidentiary effect of “[a] proof of claim executed and filed in accordance with [the] rules.” Fed. R. Bankr. P. 3001(f). If properly executed and filed under the rules along with all supporting documentation that may be required, *see, e.g.,* Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. See Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

The evidentiary presumption created by Rule 3001(f) “operates to shift the burden of going forward but not the burden of proof.” See *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706 (B.A.P. 9th Cir. 2006) (citing *Garner v. Shier (In re Garner)*, 246 B.R. 617, 622 (B.A.P. 9th Cir. 2000); *Diamant*, 165 F.3d at 1248). But this evidentiary presumption is rebuttable. *Id.* at 706. “One rebuts evidence with counter-evidence.” *Id.* at 707; *see also*

Am. Express Bank, FSB v. Askenaizer (In re Plourde), 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009) ("[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it.").

The court is not persuaded that the debtor has overcome the presumptive validity of the proof of claim. IRS' claim is for estimated unassessed 2016 tax year liability. The debtor argues that the amount of IRS' claim should not be \$4,090.28. She contends that it should be \$264.45, based on a payment voucher the IRS sent to the debtor for the amount of \$263. See ECF No. 24 at 6.

However, the voucher referenced by the debtor does not establish in any way that the IRS is negating its proof of claim figure for the debtor's 2016 tax liability.

The voucher contains no language stating anything about the debtor's 2016 tax liability. The court sees no date on the voucher either. And the voucher does not say that it is the one and only payment billed to the debtor for her 2016 tax liability. The voucher merely asks the debtor to pay \$263 on account of the debtor's 2016 tax liability. The voucher is far from persuasive that it settles the debtor's 2016 tax liability for \$263 or 264.45.

The court is not convinced that the voucher overcomes the presumptive validity of IRS' proof of claim. Without more, the court cannot sustain the objection.

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 objection to proof of claim 1-2 has been presented to the court. Having considered the motion, any oppositions or replies, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the objection is overruled.

19. [19-10228](#)-A-13 **IN RE: ARMIDA CEDARIO**
[MHM-2](#)

MOTION TO DISMISS CASE
5-22-2019 [\[31\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

20. [19-10228](#)-A-13 **IN RE: ARMIDA CEDARIO**
[MHM-3](#)

MOTION TO DISMISS CASE
6-19-2019 [[42](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

No Ruling

21. [19-10228](#)-A-13 **IN RE: ARMIDA CEDARIO**
[TOG-1](#)

MOTION TO CONFIRM PLAN
6-13-2019 [[35](#)]

ARMIDA CEDARIO/MV
THOMAS GILLIS

No Ruling

22. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[FW-2](#)

MOTION TO USE CASH COLLATERAL
7-3-2019 [[39](#)]

MIKAL JONES/MV
PETER FEAR

No Ruling

23. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[WW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-2019 [[25](#)]

RUSSELL DILDAY/MV
PETER FEAR
RILEY WALTER/ATTY. FOR MV.
CONDITIONAL NON-OPPOSITION

Tentative Ruling

Motion: Stay Relief to Pursue State Court Litigation
Notice: LBR 9014-1(f)(1); conditional non-opposition filed
Disposition: Granted only to the extent specified in this ruling
Order: Civil minute order

Subject: Pending state court litigation, including appeal from judgment by the debtor, as described in the motion

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

The debtor has filed a conditional non-opposition, agreeing with this motion unless the court does not grant his motion for use of cash collateral.

Having considered the motion's well-pleaded facts and the responses and replies pertaining to the motion, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue through appeal and final judgment the pending state-court litigation identified in the motion. The moving party may also file post-judgment motions and appeals and defend appeals.

No action shall be taken to collect or enforce any judgment, except by filing a proof of claim or amending an existing proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Russell Dilday, Tanna Dilday, and Mary Ann Ferrero's motion for relief from the automatic stay has been presented to the court. Having considered the well-pleaded facts of the motion and any responses and replies pertaining to the motion,

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movants to pursue through appeal and final judgment the pending state-court litigation described in the motion.

IT IS FURTHER ORDERED that the movants may also file post-judgment motions and appeals. But the movants shall not take any action to collect or enforce any judgments, or pursue costs or attorney's fees against the debtor, except by filing a proof of claim or amending an existing proof of claim in this case.

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

24. [19-11931](#)-A-13 **IN RE: MARTINA DUL**

OBJECTION TO CONFIRMATION OF PLAN BY US BANK TRUST NATIONAL
ASSOCIATION
5-31-2019 [\[11\]](#)

US BANK TRUST NATIONAL
ASSOCIATION/MV
ROBERT WILLIAMS
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

No Ruling

25. [18-15139](#)-A-13 **IN RE: AARON/ANNIE LUCAS**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
5-23-2019 [[65](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

No Ruling

26. [18-15139](#)-A-13 **IN RE: AARON/ANNIE LUCAS**
[PK-2](#)

CONTINUED MOTION TO CONFIRM PLAN
5-22-2019 [[56](#)]

AARON LUCAS/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

No Ruling

27. [18-15139](#)-A-13 **IN RE: AARON/ANNIE LUCAS**
[PPR-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CITIZENS
BANK, N.A.
6-13-2019 [[80](#)]

CITIZENS BANK, N.A./MV
PATRICK KAVANAGH
LEE RAPHAEL/ATTY. FOR MV.

No Ruling

28. [19-11439](#)-A-13 **IN RE: JOHN HERNANDEZ**
[NSV-1](#)

MOTION TO CONFIRM PLAN
5-30-2019 [[39](#)]

JOHN HERNANDEZ/MV
NIMA VOKSHORI
DISMISSED

Final Ruling

The case having been dismissed, the matter is dropped as moot.

29. [19-12039](#)-A-13 **IN RE: MOHAMMAD KHAN**

MOTION TO EXTEND TIME
6-12-2019 [\[20\]](#)

MOHAMMAD KHAN/MV
DISMISSED

Final Ruling

The case having been dismissed, the matter is dropped as moot.

30. [19-10640](#)-A-13 **IN RE: GARY/ROSE BRADY**
[MHM-3](#)

MOTION TO DISMISS CASE
5-22-2019 [\[42\]](#)

MICHAEL MEYER/MV
SUSAN HEMB

No Ruling

31. [18-14242](#)-A-13 **IN RE: ELIZABETH FRANCO**
[MHM-1](#)

MOTION TO DISMISS CASE
6-11-2019 [\[60\]](#)

MICHAEL MEYER/MV
SCOTT LYONS
RESPONSIVE PLEADING

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

32. [18-14443](#)-A-13 **IN RE: JOSE MERAS**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
4-16-2019 [\[79\]](#)

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

No Ruling

33. [19-11645](#)-A-13 **IN RE: EDWARD GUTIERREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
6-18-2019 [[15](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

No Ruling

34. [19-11448](#)-A-13 **IN RE: DONNIE EASON**
[MHM-2](#)

MOTION TO DISMISS CASE
6-12-2019 [[24](#)]

MICHAEL MEYER/MV
DAVID JENKINS
DISMISSED

Final Ruling

The case having been dismissed, the matter is dropped as moot.

35. [19-10251](#)-A-13 **IN RE: RAFAEL VALDOVINOS AND BERTA DE**
AGUILAR
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
5-22-2019 [[44](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
WITHDRAWN

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

36. [19-11654](#)-A-13 **IN RE: LINNEY WADE**
[MHM-2](#)

MOTION TO DISMISS CASE
6-7-2019 [[23](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN

No Ruling

37. [19-11255](#)-A-13 **IN RE: MOISES/JACQUELINE ARCE**
[MAZ-1](#)

MOTION TO CONFIRM PLAN
5-30-2019 [\[33\]](#)

MOISES ARCE/MV
MARK ZIMMERMAN
DISMISSED

Final Ruling

The case having been dismissed, the matter is dropped as moot.

38. [19-11756](#)-A-13 **IN RE: LOUIS CASTELLO**
[MHM-2](#)

MOTION TO DISMISS CASE
6-6-2019 [\[20\]](#)

MICHAEL MEYER/MV

No Ruling

39. [19-10558](#)-A-13 **IN RE: GWENDOLYN BROWN**
[MHM-3](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-9-2019 [\[30\]](#)

MICHAEL MEYER/MV
DAVID JENKINS

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

40. [14-12359](#)-A-13 **IN RE: ANDRES/BILLIE SALAZAR**
[MHM-3](#)

MOTION TO DISMISS CASE
6-10-2019 [\[115\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER
WITHDRAWN

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

41. [19-10559](#)-A-13 **IN RE: LINDA FORD**
[MHM-2](#)

MOTION TO DISMISS CASE
5-30-2019 [\[41\]](#)

MICHAEL MEYER/MV
PETER BUNTING

No Ruling

42. [19-10559](#)-A-13 **IN RE: LINDA FORD**
[MHM-3](#)

MOTION TO DISMISS CASE
6-12-2019 [\[45\]](#)

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

No Ruling

43. [19-10559](#)-A-13 **IN RE: LINDA FORD**
[PBB-2](#)

MOTION TO CONFIRM PLAN
6-14-2019 [\[49\]](#)

LINDA FORD/MV
PETER BUNTING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation.

In re Andrews, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

44. [19-11359](#)-A-13 **IN RE: JUAN/MARIA VELAZQUEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
6-19-2019 [\[37\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

45. [19-11762](#)-A-13 **IN RE: ARTHUR/RACHEL QUINTANA**
[MHM-2](#)

MOTION TO DISMISS CASE
6-10-2019 [\[30\]](#)

MICHAEL MEYER/MV
BENNY BARCO
WITHDRAWN

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

46. [17-13863](#)-A-13 **IN RE: MARK GENTRY AND KATRINA MCDONALD**
GENTRY
[NES-4](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS
ATTORNEY(S)
6-19-2019 [\[74\]](#)

NEIL SCHWARTZ

Final Ruling

Application: Allowance of First 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 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Offices of Neil Schwartz has applied for an allowance of a first interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$10,912.50 and reimbursement of expenses in the amount of \$426.

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.

Neil Schwartz's application for allowance of first 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 \$10,912.50 and reimbursement of expenses in the amount of \$426. The aggregate allowed amount equals \$11,338.50. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$11,338.50 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.

47. [19-11767](#)-A-13 **IN RE: ARACELI MORA**
[MHM-1](#)

MOTION TO DISMISS CASE
6-12-2019 [\[27\]](#)

MICHAEL MEYER/MV
HENRY NUNEZ

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

48. [17-10068](#)-A-13 **IN RE: WILLIAM/TRELLA LINLEY**
[ALG-1](#)

MOTION TO MODIFY PLAN
5-17-2019 [\[26\]](#)

WILLIAM LINLEY/MV
JANINE ESQUIVEL OJI
JANINE ESQUIVEL/ATTY. FOR MV.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on

modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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

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

49. [19-11868](#)-A-13 **IN RE: KEVIN RIPPEON**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-20-2019 [\[23\]](#)

FORD MOTOR CREDIT COMPANY/MV
SUSAN HEMB
AUSTIN NAGEL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Ford F150 vehicle

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).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as two postpetition payments are

past due. The total postpetition delinquency is approximately \$2,403.

Alternatively, because the plan provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property (when claim of \$67,524 is compared to value of \$44,239). Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

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.

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.

Ford Motor Credit Company's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 2018 Ford F150 vehicle, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

50. [19-12168](#)-A-13 **IN RE: SANDRA BOMBITA**
[KEH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BALBOA THRIFT AND LOAN
6-14-2019 [\[26\]](#)

BALBOA THRIFT & LOAN/MV
TIMOTHY SPRINGER
KEITH HERRON/ATTY. FOR MV.

No Ruling

51. [19-12168](#)-A-13 **IN RE: SANDRA BOMBITA**
[TCS-2](#)

MOTION TO VALUE COLLATERAL OF BALBOA THRIFT AND LOAN
ASSOCIATION
6-17-2019 [\[32\]](#)

SANDRA BOMBITA/MV
TIMOTHY SPRINGER

Final Ruling

Motion: Value Collateral [Personal Property; 2014 Ford Fusion vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2014 Ford Fusion vehicle. The debt secured by the vehicle was not incurred within the 910-day period

preceding the date of the petition. The court values the vehicle at \$6,500.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2014 Ford Fusion vehicle has a value of \$6,500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6,500 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

52. [19-11672](#)-A-13 **IN RE: RICHARD HAWORTH**
[MHM-2](#)

MOTION TO DISMISS CASE
6-6-2019 [\[34\]](#)

MICHAEL MEYER/MV

No Ruling

MOTION TO VACATE DISMISSAL OF CASE
6-25-2019 [\[19\]](#)

JAVIER GARZA/MV
JAVIER GARZA/ATTY. FOR MV.
DISMISSED

Tentative Ruling

Motion: Set Aside Dismissal

Notice: N/A (set by court order)

Disposition: Denied

Order: Civil minute order

The debtor is asking for the court to set aside the June 24, 2019 dismissal of the case. The case was dismissed because the debtor had failed to file the verification and creditor master address list.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider a judgment, order, or proceeding for:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

This motion has been filed timely. It was filed on June 25, one day after the court dismissed the case. ECF Nos. 13 & 19.

However, the court is not convinced that setting aside of the dismissal is appropriate here.

The debtor has not pointed to any of the grounds enumerated in Rule 60(b) for setting aside of the dismissal. The debtor merely apologizes for not submitting the verification and master address list on time. She gives no reason for the failure to file the documents timely, however.

The court's June 11 notice of incomplete filing required that the verification and master address list be received by the clerk of the

court no later than June 18. ECF No. 3. The debtor did not file these documents until June 25, by which time the court had already dismissed the case. ECF No. 17.

Further, although the debtor does not give a reason for the late filing of the verification and master address list, even if the reason was neglect by the debtor, under Rule 60(b) only *excusable* neglect allows setting aside of the dismissal.

The motion gives no information to the court for concluding that excusable neglect or any other basis under Rule 60(b) are applicable here. As such, the motion cannot be granted. It will be denied. The court has no basis for setting aside the dismissal.

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 for setting aside dismissal of the case has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

54. [19-10975](#)-A-13 **IN RE: EDUARDO FRANCO**
[TOG-2](#)

MOTION TO VALUE COLLATERAL OF WESTERRA CREDIT UNION
6-4-2019 [\[30\]](#)

EDUARDO FRANCO/MV
THOMAS GILLIS

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle (2015 Toyota Corolla)]

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

Disposition: Denied without prejudice

Order: Civil minute order

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in

such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2015 Toyota Corolla. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition.

However, the court does not have probative or admissible evidence of value for the vehicle. The only evidence of value in the record is a statement from the debtor in his supporting declaration, stating that, "My opinion is the fair market value of the vehicle is \$9,564.00." ECF No. 32 (emphasis omitted).

The standard for valuing vehicles is replacement value, defined as "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." 11 U.S.C. § 506(a)(2).

The evidence is inadmissible. It does not represent the price a retail merchant would charge. The debtor has not been qualified as someone able to render an opinion involving such specialized knowledge. The evidence is also vague and/or ambiguous. There is nothing in the supporting declaration identifying the basis for the debtor's opinion of value. For instance, the debtor says nothing about the vehicle's condition.

The court cannot value the vehicle at the proposed value by the debtors. There is no admissible evidence in the record.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied without prejudice.

55. [17-11776](#)-A-13 **IN RE: ROSS GALLAHER**
[MHM-1](#)

MOTION TO DISMISS CASE
6-10-2019 [\[52\]](#)

MICHAEL MEYER/MV
STEPHEN LABIAK

No Ruling

56. [19-11878](#)-A-13 **IN RE: ROXANNE CLARK**
[MHM-2](#)

MOTION TO DISMISS CASE
6-6-2019 [\[16\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

Final Ruling

The movant has withdrawn this motion. ECF No. 35. The court deems the motion to have been voluntarily dismissed.

57. [19-12678](#)-A-13 **IN RE: ANTONIO HERNANDEZ SILVA**
[JDR-1](#)

MOTION TO EXTEND AUTOMATIC STAY
6-24-2019 [\[8\]](#)

ANTONIO HERNANDEZ SILVA/MV
JEFFREY ROWE

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the 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).

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only “after notice and a hearing *completed* before the expiration of the 30-day period” after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

58. [19-12380](#)-A-13 **IN RE: JESSE CANALES**

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-24-2019 [\[24\]](#)

38SDJV HOLDINGS, LLC/MV
MILES GRANT/ATTY. FOR MV.
DISMISSED

Final Ruling

The case having been dismissed, the matter is dropped as moot.

59. [19-11189](#)-A-13 **IN RE: ARMANDO GONZALES AND CLAUDIA BATZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-1-2019 [\[47\]](#)

THOMAS GILLIS
7/2/19 INSTALLMENT FEE PAID \$80

Final Ruling

The installment having been paid, the order to show cause is discharged. The case will remain pending.

60. [19-11189](#)-A-13 **IN RE: ARMANDO GONZALES AND CLAUDIA BATZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
5-15-2019 [\[27\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

61. [19-11690](#)-A-13 **IN RE: JIMMY/LUPE FURR**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
6-19-2019 [\[16\]](#)

JIMMY FURR/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Air Conditioning Unit]

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).

VALUATION OF COLLATERAL

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

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as air conditioning unit attached to the debtor's residence. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$2,500.

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 non-vehicular, personal 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 personal property collateral described as an air conditioning unit has a value of \$2,500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2,500, equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

62. [18-11292](#)-A-13 **IN RE: ANGEL PEREZ**
[TCS-4](#)

MOTION TO MODIFY PLAN
6-5-2019 [\[89\]](#)

ANGEL PEREZ/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

No ruling

63. [18-14592](#)-A-13 **IN RE: MICHAEL/RANDI KESTNER**
[SL-3](#)

MOTION TO MODIFY PLAN
6-3-2019 [\[68\]](#)

MICHAEL KESTNER/MV
STEPHEN LABIAK
WITHDRAWN

Final Ruling

This motion was withdrawn, this matter is dropped as moot.

64. [18-14592](#)-A-13 **IN RE: MICHAEL/RANDI KESTNER**
[SL-4](#)

MOTION TO MODIFY PLAN
6-10-2019 [\[76\]](#)

MICHAEL KESTNER/MV
STEPHEN LABIAK

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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

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

65. [19-10296](#)-A-13 **IN RE: SANDRA BARBOZA**
[MHM-1](#)

MOTION TO DISMISS CASE
6-20-2019 [[28](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

No Ruling

66. [19-12660](#)-A-13 **IN RE: JORGE/MELISSA VELEZ**
[RSW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
7-8-2019 [[14](#)]

JORGE VELEZ/MV
ROBERT WILLIAMS
NO OST

No Ruling