

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, July 23, 2020  
Place: Department A - Courtroom #11  
Fresno, California

**ALL APPEARANCES MUST BE TELEPHONIC**  
**(Please see the court's website for instructions.)**

*Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

9:00 AM

1. [19-10803](#)-A-13 IN RE: CHRISTY BEELER  
[MHM-1](#)

CONTINUED CHAPTER 13 TRUSTEE'S FORBEARANCE STATUS CONFERENCE  
6-17-2020 [[53](#)]

RESPONSIVE PLEADING

NO RULING

2. [19-10803](#)-A-13 IN RE: CHRISTY BEELER  
[TCS-3](#)

MOTION TO MODIFY PLAN  
6-11-2020 [[46](#)]

CHRISTY BEELER/MV  
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to August 26, 2020 at 3:00 p.m.

ORDER: The court will issue an order.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee (the "Trustee") has filed an objection to the debtor's motion to modify a Chapter 13 plan. Unless this case is voluntarily converted to Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than August 5, 2020. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The Trustee shall file and serve a reply, if any, by August 12, 2020.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than August 12, 2020. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.

3. [20-11908](#)-A-13     **IN RE: BRIAN/STEPHANIE RICH**  
[GB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ASPEN PROPERTIES GROUP  
LLC  
6-19-2020    [\[19\]](#)

ASPEN PROPERTIES GROUP LLC/MV

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Sustained.

ORDER:                        The minutes of the hearing will be the court's  
findings and conclusions. The Moving Party  
will submit a proposed order after hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Aspen Properties Group LLC as Trustee of AG3 Revocable Trust ("Secured Creditor") objected to confirmation of the debtors' Chapter 13 plan pursuant to 11 U.S.C. § 1322(b)(2) on the basis that the plan modifies the rights of Secured Creditor whose claim is secured by only a security interest in the debtors' primary residence, and 11 U.S.C. § 1325(a)(5)(B)(ii) on the basis that the plan proposes to pay less than the allowed amount of Secured Creditor's claim by understating the amount of arrears that are owed, and thus fails to provide for the cure of pre-petition arrears. Doc. #19.

The debtors' plan listed Class 1 pre-petition arrears owed to Secured Creditor in the amount of only \$26,000.00. See Doc. #2. However, Secured Creditor contends it is owed pre-petition arrears totaling \$27,415.40. Doc. #19. Secured Creditor filed a proof of secured claim on June 5, 2020, in the total amount of \$44,260.19, including pre-petition arrears of \$27,415.40. See Claim No. 1-1.

Federal Rule of Bankruptcy Procedure 3001(f) provides that the execution and filing of a proof of claim is *prima facie* evidence of the validity and amount of the claim. The debtors have not filed an objection, if any, to Secured Creditor's proof of claim. Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. See Doc. #2. Further, section 3.07(b)(2) of the plan requires that the payment be adjusted accordingly for a Class 1 claim. The debtors' plan cannot be confirmed because it fails to provide for payment in full of the pre-petition arrears owed to Secured Creditor. See id.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

4. [20-10110](#)-A-13     **IN RE: ANGEL DIAZ**  
[UST-1](#)

MOTION TO DISGORGE FEES  
6-10-2020    [\[57\]](#)

TRACY DAVIS/MV  
DISMISSED 05/11/2020; RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

ORDER:                            The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion was set for hearing on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The United States Trustee, Tracy Hope Davis (the "UST"), moves the court pursuant to 11 U.S.C. § 329 to review the fees of Mark J. Hannon ("Hannon"), attorney for debtor Angel Ramon Diaz (the "Debtor"), received in connection with this Chapter 13 case, and order (1) disgorgement of all fees received by Hannon and return these monies to the Debtor; (2) reduction of Hannon's agreed-upon fee to the extent the court finds the fee unreasonable and excessive; and (3) any other relief the court deems just and proper. Doc. #57. Hannon filed a timely opposition to the UST's motion. Doc. #66.

The UST argues that Hannon's inadequate representation caused prejudice to the Debtor and the estate, and identifies breaches of duties in the following areas: (1) initial case preparation and filing of schedules; (2) delays in providing information to the Chapter 13 Trustee; (3) lack of responsiveness to the Chapter 13 Trustee's requests for documents; and (4) inadequate representation of the Debtor's interests that resulted in dismissal of this case. Doc. #59. The UST's motion is supported by the record and the declaration of the Chapter 13 Trustee, Michael H. Meyer. Doc. #60.

Hannon filed a response to the UST's motion for review of fees on July 9, 2020. Doc. #66. Hannon sets forth his narrative of the facts of this case and argues that the legal services he provided were appropriate under the circumstances. Id. Hannon's response is supported by the declarations of Hannon and his employee Brenda Reyes ("Reyes"). Doc. ##67, 69.

Hannon argues he did everything he could to confirm a plan for the Debtor under the circumstances and offered to file a fee application that will justify his fees.

The UST replied to Hannon's response on July 16, 2020. Doc. #72. The UST argues Hannon's response fails to rebut the allegations in the motion, challenges the argument that the Debtor wanted his case dismissed as unsupported by the record and any admissible evidence, and objected to assertions made in Hannon's response to the extent they are based on inadmissible evidence. The UST reserved her right to conduct discovery pursuant to Federal Rule of Bankruptcy Procedure 9014.

Hannon filed a sur-reply on July 20, 2020. Doc. #74. Hannon urges the court to follow the approaches taken by Judges Klein and Sargis in recent motions for disgorgement for consistency of decisions in the Eastern District of California.

#### APPLICABLE LAW

The court has the authority, and responsibility, to consider attorney's fees obtained or to be paid prior to or during a bankruptcy case. 11 U.S.C. §§ 329, 330, 331; see also Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis), 113 F.3d 1040, 1045 (9th Cir. 1997). Under Bankruptcy Code section 329(b), "a bankruptcy court may examine the reasonableness of a debtor's attorney fees and, '[i]f such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive.'" Hale v. United States Trustee, 509 F.3d 1139, 1147 (9th Cir. 2007) (quoting 11 U.S.C. § 329(b)). The standard applied under section 329(b) to determine the reasonable value of fees is set forth in section 330. Hale v. United States Trustee (In re Basham), 208 B.R. 926, 931-32 (B.A.P. 9th Cir. 1997). Fees in excess of the reasonable value of such services may be ordered repaid. See In re Lawas, Case No. 13-33513-E-13, 2014 Bankr. LEXIS 623 (Bankr. E.D. Cal. Feb. 12, 2014). The application of 11 U.S.C. § 329 and the Federal Rules of Bankruptcy Procedure may seem harsh, but they are necessary not only to protect vulnerable consumers and business owners, but also to protect the integrity of the federal judicial process. See Neben & Starrett v. Charwell Fin. Corp. (In re Park-Helena Corp.), 63 F.3d 877, 881 (9th Cir. 1995). The federal courts are not mere devices to be used to generate fees for attorneys irrespective of any bona fide rights to be adjudicated.

"Once a question has been raised about the reasonableness of the attorney's fee under section 329, it is the attorney himself who bears the burden of establishing that the fee is reasonable." In re Geraci, 138 F.3d 314, 318-19 (7th Cir. 1998). Debtor's counsel must lay bare all dealings regarding compensation and must be direct and comprehensive. See Kavanagh v. Leija (In re Leija), 270 B.R. 497, 501 (Bankr. E.D. Cal. 2001) (citation omitted); In re Bob's Supermarket's, Inc., 146 B.R. 20, 25 (Bankr. D. Mont. 1992), aff'd in part and rev'd in part, 165 B.R. 339 (B.A.P. 9th Cir. 1993). The burden is on the person to be employed to come forward and to make full, candid, complete disclosure. In re B.E.S. Concrete Products, Inc., 93 B.R. 228 (E.D. Cal. 1988).

#### DISCUSSION

Hannon provides his account of the facts of the Debtor's case and argues that the legal services he provided were appropriate under the circumstances. However, Hannon does not rebut the UST's allegation that there were obvious errors in the Debtor's schedules and statements for which Hannon had a duty to make reasonable inquiries to ensure the filings were complete and accurate. Hannon provides no excuse for filing no response to and not appearing at the hearing on the Chapter 13 Trustee's objection to confirmation of the Debtor's plan. Hannon does not address his failure to appear at the hearing on the Chapter 13 Trustee's motion to dismiss the Debtor's case. While Hannon describes the efforts he and/or his staff made to get required documents from the Debtor to the Chapter 13 Trustee, it is not clear what services Hannon performed personally and what services were provided by his office, and by whom specifically. Hannon does not state how much he received from the Debtor in connection with this case, and what was the value of the services, if any. Hannon offers no support from contemporaneous time sheets and/or other documentation reflecting, *inter alia*, what services were provided, when, by whom, the time spent on such services, and the rates charged for such services.

Considering Hannon has provided no analysis to explain what fees are reasonable, and in consideration of the evidence presented by the UST, the motion is GRANTED. Hannon shall account for and turnover any and all monies paid to him by the Debtor to the Chapter 13 Trustee. However, Hannon shall have an opportunity to file an application for compensation, which the court will consider pursuant to 11 U.S.C. § 330.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Review of Fees filed by United States Trustee, Tracy Hope Davis having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Mark J. Hannon shall account for any and all monies paid to him by the Debtor (the "Fees") and turnover the Fees, or pay the sum from other monies if he is not holding such Fees, to the Chapter 13 on or before August 6, 2020. The Chapter 13 Trustee shall segregate the Fees (which can be done by an accounting entry rather than a separate account), to which any right to payment from of Mark J. Hannon shall fix. The Chapter 13 Trustee shall not disburse the Fees except on further order of this court or as provided below.

IT IS FURTHER ORDERED that if no motion for allowance of attorney's fees is filed by Mark J. Hannon for his services as the attorney for the Chapter 13 debtor on or before noon on August 6, 2020, the Chapter 13 Trustee may lodge with this court a supplemental order (using the Docket Control Number

for the present Motion) authorizing the Chapter 13 Trustee to disburse or otherwise administer the monies as permitted under the Bankruptcy Code.

5. [20-10714](#)-A-13     **IN RE: MICHAEL/CRYSTAL GIFFORD**  
[SL-1](#)

MOTION TO CONFIRM PLAN  
6-8-2020    [[26](#)]

MICHAEL GIFFORD/MV

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Granted.

ORDER:                            The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

6. [20-11415](#)-A-13     **IN RE: ALBERTO GALICIA FLORES AND JOANNA CANO**  
[MAZ-1](#)

MOTION TO CONFIRM PLAN  
6-16-2020    [[27](#)]

ALBERTO GALICIA FLORES/MV  
RESPONSIVE PLEADING

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion on July 21, 2020.  
Doc. #42.

7. [20-10318](#)-A-13     **IN RE: JOSE GONZALEZ AND ITALIA DE LOZA**  
[MHM-3](#)

MOTION TO DISMISS CASE  
6-23-2020    [[62](#)]

MICHAEL MEYER/MV  
RESPONSIVE PLEADING

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Continued to August 19, 2020 at 3:00 p.m.

ORDER:                            The court will issue an order.

The trustee's motion to dismiss will be continued to August 19, 2020 at 3:00 p.m., to be heard with the debtors' motion to confirm plan.

8. [20-12119](#)-A-13     **IN RE: JAVIER GARZA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-7-2020    [[20](#)]

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    The minutes of the hearing will be the court's findings and conclusions.

ORDER:                            The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

The court notes a partial filing fee of \$210.00 paid on July 14, 2020.



9. [20-11821](#)-A-13     **IN RE: AIMIDA GOMEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-9-2020    [[17](#)]

MICHAEL MEYER/MV

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Unless the trustee's motion is withdrawn at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

ORDER:                            The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

This matter was noticed pursuant to LBR 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondent's default and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for: 1. Unreasonable delay by the debtor that is prejudicial to creditors. [11 U.S.C. §1307(c)(1)]; 2. Failure to appear at the scheduled 341 Meeting of Creditors; 3. Debtor failed to provide the Trustee with required documentation; and 4. Failure to set a plan for hearing with notice to creditors. Doc #17.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause". "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors.

The court notes debtor's opposition filed July 21, 2020. Doc. # 22.

Unless this motion is adequately opposed at the hearing, or withdrawn, the motion will be GRANTED, and the case dismissed.

MOTION TO EXTEND AUTOMATIC STAY  
7-2-2020    [\[7\]](#)

KHALID CHAOUI/MV

NO RULING

While the notice of the motion required written opposition to be filed 14 days before the hearing, this motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2), on fewer than twenty-eight (28) days' notice, so no written opposition was required. The hearing on the motion will proceed as scheduled. The debtor should be prepared to address the issues identified herein and such other issues as are necessary and appropriate to the court's resolution of the matter. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor Khalid Chaoui (the "Debtor") filed this Chapter 13 case in pro per - his second in a year, and moves to extend the automatic stay in this case as against all creditors pursuant to 11 U.S.C. § 362(c)(3).

Under 11 U.S.C. § 362(c)(3)(A), if a debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the current case.

The Debtor had one Chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 20-11242 (Bankr. E.D. Cal) (the "First Case"). The First Case also was filed in pro per on March 30, 2020, and dismissed on May 22, 2020, for failure to pay filing fees. The Debtor filed this case on July 1, 2020. Doc. #1. Thus, the automatic stay will terminate in the present case on July 31, 2020.

Bankruptcy Code section 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(3)(B).

If the stay is to be extended as to all creditors, 11 U.S.C. § 362(c)(3)(C)(i) creates a presumption that the present case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of

a confirmed plan; or (3) the debtor has not had a substantial change in his financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan.

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016)(citations omitted)(overruled on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019)).

The Debtor's motion contends that he had no other pending bankruptcy cases dismissed in the preceding one-year period. Doc. #7, ¶ 3. The Debtor further alleges that he did not have any prior case dismissed in the preceding year for failure to file or amend required documents without substantial excuse, failure to provide adequate protection as ordered by the court, or failure to perform the terms of a confirmed plan. Id. at ¶ 4. The Debtor has not filed a supporting declaration. The Debtor did pay the \$310 fee to file this Chapter 13 voluntary petition on July 1, 2020.

The court does have some concerns that this case will not result in a discharge or fully performed plan, which the Debtor will need to address at hearing. The Debtor's Schedules I and J from the First Case and in the current case do not show any substantial change in his financial or personal affairs since the dismissal of the First Case. See Doc. #14. In the First Case, it appears the Debtor failed to attend the section 341 meeting of creditors. The meeting of creditors in this case is scheduled for August 4, 2020 at 10:00 a.m. Doc. #23. Further, although a plan was filed but not confirmed in the First Case, it appears the Debtor was delinquent in his payments to the Chapter 13 trustee. When the First Case was dismissed for failure to pay the filing fee, the trustee had a pending motion to dismiss scheduled for hearing. The plan in the First Case attempted to provide for payments on mortgage arrearages, two vehicles, attorney's fees (even though the Debtor was in pro per), and 100% to unsecured creditors. The current plan removes payments for attorney's fees and the two vehicles, and lowers the monthly plan payments. Doc. #16. The Debtor's Schedule I lists monthly income of \$5,391.82 and Schedule J lists monthly expenses of \$1,960.00, leaving net income of \$3,431.82 per month that is sufficient to make the proposed plan payments. Doc. #14. Additionally, the Debtor seems to have filed this case to prevent the foreclosure sale of his primary residence scheduled for July 22, 2020. See Doc. #8. Secured creditor Wells Fargo Bank, N.A. ("Wells Fargo") did not file a motion for relief from stay in the First Case and has not yet filed a relief from stay motion in this case. However, Wells Fargo filed a proof of claim on July 15, 2020 in the amount of \$237,997.33, with \$28,194.12 in arrears at 4.75% interest. Claim 2-1. The Debtor's

plan in this case understates the amount necessary to cure the arrears with only \$21,000.00 at 0% interest. Doc. #16.

The court is inclined to grant this motion to extend the automatic stay in this case for all purposes as to all parties who received notice if, at the hearing on the motion, the Debtor can rebut by clear and convincing evidence the statutory presumption that this case was not filed in good faith.

11. [20-11231](#)-A-13     **IN RE: MARIA FIGUEROA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-6-2020    [\[21\]](#)

\$130.00 PAID ON 7/9/20

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        The OSC will be vacated.

ORDER:                The court will issue an order.

The record shows that the installment fees now due have been paid.

12. [19-15138](#)-A-13     **IN RE: JULIO/VIOLENA CELAYA**  
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF LENDMARK FINANCIAL SERVICES,  
LLC  
6-18-2020    [\[77\]](#)

JULIO CELAYA/MV

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        Granted if the Debtors can state the legal grounds upon which relief is sought.

ORDER:                The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987).

However, constitutional due process still requires the movant to make a *prima facie* showing that they are entitled to the relief sought. This motion seeks an order valuing collateral, but does not cite any legal grounds upon which the debtors are entitled to the relief requested. LBR 9014-1(d)(3)(A) requires a motion to "set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." The motion cites only the procedural rule at LBR 3015-1(i) that if a Chapter 13 debtor's proposed plan will reduce or eliminate a secured claim based on the value of its collateral, the debtor must file, serve, and set for hearing a valuation motion, and the hearing must be concluded before or in conjunction with the confirmation of the plan. While the court could deny the motion without prejudice for the failure of the motion to cite the legal grounds for the relief sought, the court will hear the matter to confirm the legal grounds upon which relief is sought.

Julio Celaya and Violena Celaya (the "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' vehicle, a 2000 Dodge Durango (the "Vehicle"), which is the collateral of Lendmark Financial Services, LLC ("Creditor"). Doc. #77.

Bankruptcy Code section 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(1). Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "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 Debtors believe the replacement value of the Vehicle is \$2,661.00. Doc. #79, Celaya Decl. ¶ 4. The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

If the Debtors can confirm the legal ground(s) upon which they seek relief, the court is inclined to grant the motion and fix Creditor's secured claim at the replacement value of \$2,661.00. A proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

13. [20-10945](#)-A-12      **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**

OBJECTION TO CONFIRMATION OF PLAN BY NEBRASKA STATE BANK  
7-9-2020    [[78](#)]

NEBRASKA STATE BANK/MV

NO RULING

14. [20-10945](#)-A-12      **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY  
PETITION  
3-12-2020    [[1](#)]

NO RULING

15. [20-10945](#)-A-12      **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[DRJ-2](#)

MOTION TO CONFIRM CHAPTER 12 PLAN  
6-18-2020    [[49](#)]

AJITPAL SINGH/MV  
RESPONSIVE PLEADING

NO RULING

Canon 3C(1) of the Code of Conduct for United States Judges ("Code of Conduct") provides in relevant part that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned," and sets forth five separate subsections of specific instances in which disqualification is mandatory, none of which are applicable here. Canon 3D of the Code of Conduct permits a judge to participate in a proceeding instead of withdrawing if the basis of disqualification is disclosed on the record, the basis is not one of the five separate subsections, and "if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding."

While Judge Niemann does not believe that there are any grounds for her disqualification in this bankruptcy case, out of an abundance of caution, Judge Niemann discloses the following connection to the Hon. Howard Broadman (ret.) ("Arbitrator Broadman"), the arbitrator in a four-day, pre-petition arbitration between creditors Kewal Singh, Jaskaran Singh Sihota, and Jaswinder Kaur (collectively, the "Toronto Group") and the debtors Ajitpal Singh and Jatinderjeet Sihota (collectively, the "Debtors"). Judge Niemann met Arbitrator

Broadman in late November 2001, when Judge Niemann, her husband and Arbitrator Broadman were three of fifteen tourists, and three of five Americans, on a three-day/two-night boat tour of Halong Bay, Vietnam. Judge Niemann and her husband connected with Arbitrator Broadman as all three were from California and Judge Niemann and Arbitrator Broadman were both attorneys. Although Judge Niemann has not seen Arbitrator Broadman since the 2001 Halong Bay tour, Judge Niemann remained in intermittent email contact with Arbitrator Broadman after the Halong Bay tour as he was added to the list of hundreds of people receiving periodic group updates from Judge Niemann and her husband regarding their 18-month trip around the world, which was completed in April 2002. The last contact Judge Niemann recalls having with Arbitrator Broadman is an email exchange in August 2007 when Judge Niemann was visiting Sequoia and Kings Canyon National Parks, and inquired as to whether Arbitrator Broadman was available to meet for lunch in Visalia, and he was not.

Pursuant to Canon 3D of the Code of Conduct, counsel for the Toronto Group and the Debtors should be ready to state on the record at the beginning of the hearings in the Debtors' bankruptcy case on July 23, 2020, whether that party agrees that Judge Niemann should not be disqualified from hearing all matters related to the Toronto Group in the Debtors' bankruptcy case.

16. [15-11649](#)-A-13     **IN RE: JOSE/ADRIANA PEREZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
6-18-2020    [\[22\]](#)

MICHAEL MEYER/MV

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

An order dismissing this case was already entered on July 21, 2020. Doc. #32. The motion will be DENIED AS MOOT.

17. [20-10865](#)-A-13     **IN RE: ARTURO MONTEJANO MELGOZA AND LIDUVINA**  
SEVILLA DE MONTEJANO  
[EPE-2](#)

MOTION TO CONFIRM PLAN  
6-16-2020    [\[51\]](#)

ARTURO MONTEJANO MELGOZA/MV

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Dropped from Calendar.

ORDER: The court will issue an order.

The record shows that the debtors filed a Motion to Confirm using Docket Control Number (DCN) EPE-2. Doc. #51. This DCN was previously used on a Motion to Value Collateral. Doc. #42. Debtors have filed another Motion to Confirm Plan using DCN EPE-4 which is set for hearing on August 12, 2020. Doc. #58. Therefore, the court will drop this matter from calendar and take up the merits of the Motion to Confirm Plan on August 12, 2020.

18. [19-14166](#)-A-13 **IN RE: STANLEY/MARCIA ALEC**  
[PBB-1](#)

MOTION TO MODIFY PLAN  
6-15-2020 [[21](#)]

STANLEY ALEC/MV

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on July 22, 2020.  
Doc. #28.

19. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY  
PETITION  
2-18-2020 [[1](#)]

NO RULING

20. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[DRJ-1](#)

CONTINUED RE: MOTION TO USE CASH COLLATERAL  
3-2-2020 [[24](#)]

BHAJAN SINGH/MV

NO RULING

21. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[DRJ-3](#)

MOTION TO CONFIRM CHAPTER 12 PLAN  
6-18-2020 [[157](#)]

BHAJAN SINGH/MV  
RESPONSIVE PLEADING



## NO RULING

Canon 3C(1) of the Code of Conduct for United States Judges ("Code of Conduct") provides in relevant part that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned," and sets forth five separate subsections of specific instances in which disqualification is mandatory, none of which are applicable here. Canon 3D of the Code of Conduct permits a judge to participate in a proceeding instead of withdrawing if the basis of disqualification is disclosed on the record, the basis is not one of the five separate subsections, and "if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding."

While Judge Niemann does not believe that there are any grounds for her disqualification in this bankruptcy case, out of an abundance of caution, Judge Niemann discloses the following connection to the Hon. Howard Broadman (ret.) ("Arbitrator Broadman"), the arbitrator in a four-day, pre-petition arbitration between creditors Kewal Singh, Jaskaran Singh Sihota, and Jaswinder Kaur (collectively, the "Toronto Group") and the debtors Bhajan Singh and Balvinder Kaur (collectively, the "Debtors"). Judge Niemann met Arbitrator Broadman in late November 2001, when Judge Niemann, her husband and Arbitrator Broadman were three of fifteen tourists, and three of five Americans, on a three-day/two-night boat tour of Halong Bay, Vietnam. Judge Niemann and her husband connected with Arbitrator Broadman as all three were from California and Judge Niemann and Arbitrator Broadman were both attorneys. Although Judge Niemann has not seen Arbitrator Broadman since the 2001 Halong Bay tour, Judge Niemann remained in intermittent email contact with Arbitrator Broadman after the Halong Bay tour as he was added to the list of hundreds of people receiving periodic group updates from Judge Niemann and her husband regarding their 18-month trip around the world, which was completed in April 2002. The last contact Judge Niemann recalls having with Arbitrator Broadman is an email exchange in August 2007 when Judge Niemann was visiting Sequoia and Kings Canyon National Parks, and inquired as to whether Arbitrator Broadman was available to meet for lunch in Visalia, and he was not.

Pursuant to Canon 3D of the Code of Conduct, counsel for the Toronto Group and the Debtors should be ready to state on the record at the beginning of the hearings in the Debtors' bankruptcy case on July 23, 2020, whether that party agrees that Judge Niemann should not be disqualified from hearing all matters related to the Toronto Group in the Debtors' bankruptcy case.

22. [20-10569](#)-A-12     **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[DRJ-4](#)

OMNIBUS OBJECTION TO CLAIMS  
6-23-2020    [[173](#)]

BHAJAN SINGH/MV

NO RULING

23. [20-10569](#)-A-12     **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[FRB-5](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 12 TO CHAPTER  
11 AND/OR MOTION TO DISMISS CASE  
5-29-2020    [[134](#)]

FARM CREDIT WEST, PCA/MV  
RESPONSIVE PLEADING

NO RULING

24. [20-12069](#)-A-13     **IN RE: SCOTT/SARINA DUTEY**  
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL  
SERVICES, INC.  
6-30-2020    [[15](#)]

SCOTT DUTEY/MV

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Denied without prejudice.

ORDER:                            The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2), on fewer than twenty-eight (28) days' notice. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014)(citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

Scott Dutey and Sabrina Dutey (the "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' vehicle, a **2016 Honda Accord LX**, which is the collateral of Americredit Financial Services, Inc. d/b/a GM Financial. Doc. #15.

However, the Debtors' declaration and exhibits in support of the motion reference a **2016 Nissan Altima SL**. Doc. ##17-18.

Because the declaration in support of the motion refers to a different vehicle than the one state in the motion, the motion is DENIED WITHOUT PREJUDICE.

25. [19-13376](#)-A-13     **IN RE: OPAL RIDER**  
[SLL-1](#)

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

OPAL RIDER/MV  
CONTINUED TO 9/17/20 PER ECF ORDER #73

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        The matter was continued to September 17, 2020 at  
11:00 a.m.

ORDER:                No order required.

A stipulation and order continuing the pre-trial conference has already been entered. Doc. #73.

26. [20-10886](#)-A-13     **IN RE: KIRK/JAYCEE KILLIAN**  
[MAZ-1](#)

MOTION TO CONFIRM PLAN  
6-16-2020    [\[42\]](#)

KIRK KILLIAN/MV

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        Continued to August 12, 2020 at 3:00 p.m.

ORDER:                The court will issue an order.

Local Rule of Practice ("LBR") 3015-1(i) provides that if a debtor's proposed Chapter 13 plan will reduce or eliminate a secured claim based on the value of its collateral, the debtor must file, serve, and set for hearing a valuation motion, and the hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the court may deny confirmation of the plan.

The record shows debtors have filed two motions to value the collateral of Chrysler Capital (Doc. #51) and Exeter Finance (Doc. #56), both set for hearing on August 12, 2020 at 3:00 p.m. Accordingly, the debtors' motion to confirm the modified plan will

be continued to be heard in conjunction with the debtors' valuation motions.

27. [20-10188](#)-A-12     **IN RE: MIKE WEBER**

OBJECTION TO CONFIRMATION OF PLAN BY LEO & EARLENE WEBER  
FAMILY TRUST, MOTION TO ENFORCE JUDGE RIMEL'S ORDER  
6-25-2020    [[86](#)]

LEO AND EARLENE WEBER FAMILY  
TRUST/MV  
RESPONSIVE PLEADING

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Dropped from calendar.

ORDER:                            The court will issue an order.

In reviewing this motion, the court has deemed this to be substantively the same motion as matter #29 below. Therefore, the court is dropping this matter from calendar.

28. [20-10188](#)-A-12     **IN RE: MIKE WEBER**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY  
PETITION  
1-17-2020    [[1](#)]

NO RULING

29. [20-10188](#)-A-12     **IN RE: MIKE WEBER**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LEO AND  
EARLENE WEBER FAMILY TRUST, MOTION TO ENFORCE JUDGE RIMEL'S  
ORDER  
6-11-2020    [[79](#)]

LEO AND EARLENE WEBER FAMILY  
TRUST/MV

NO RULING

30. [20-10188](#)-A-12     **IN RE: MIKE WEBER**  
[DRJ-4](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN  
5-6-2020    [[48](#)]

MIKE WEBER/MV  
RESPONSIVE PLEADING

NO RULING

31. [20-10188](#)-A-12     **IN RE: MIKE WEBER**  
[DRJ-7](#)

CONTINUED OBJECTION TO CLAIM OF THE LEO AND EARLENE WEBER  
FAMILY TRUST, CLAIM NUMBER 7  
5-16-2020    [[66](#)]

MIKE WEBER/MV

NO RULING

32. [20-10189](#)-A-13     **IN RE: JOSHUA CRABLE**  
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE  
5-18-2020    [[31](#)]

MICHAEL MEYER/MV  
RESPONSIVE PLEADING

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Continued to August 26, 2020 at 3:00 p.m.

ORDER:                            The court will issue an order.

The Chapter 13 trustee moved to dismiss this case under 11 U.S.C. § 1307(c)(1) based on the debtor's unreasonable delay and § 1307(c) for failure to confirm a plan. Doc. #31. The debtor filed a response on June 9, 2020, opposing dismissal because the debtor had filed a motion to confirm a Chapter 13 plan set for hearing on July 23, 2020. Doc. #45, see also Doc. #38. The trustee has filed an objection to the debtor's motion to confirm the Chapter 13 plan. Accordingly, the trustee's motion to dismiss will be continued to track with the debtor's motion to confirm the plan.

33. [20-10189](#)-A-13     **IN RE: JOSHUA CRABLE**  
[TAM-1](#)

MOTION TO CONFIRM PLAN  
6-9-2020    [[38](#)]

JOSHUA CRABLE/MV  
RESPONSIVE PLEADING

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Continued to August 26, 2020 at 3:00 p.m.

ORDER:                            The court will issue an order.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee

(the "Trustee") has filed an objection to the debtor's motion to confirm a Chapter 13 plan. Unless this case is voluntarily converted to Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than August 5, 2020. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The Trustee shall file and serve a reply, if any, by August 12, 2020.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than August 12, 2020. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.