

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** THURSDAY  
**DATE:** JULY 27, 2017  
**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 CASES

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**ORAL ARGUMENT**

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

**COURT'S ERRORS IN FINAL RULINGS**

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

1. [12-17603](#)-A-13 JOHN/KER VANG  
FW-5

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL,  
DEBTORS ATTORNEY(S)  
6-27-17 [[120](#)]

PETER FEAR/Atty. for dbt.

### **Final Ruling**

**Application:** Allowance of Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Fear Waddell, PC has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2311.00 and reimbursement of expenses in the amount of \$191.01. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

### **CIVIL MINUTE ORDER**

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

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

Fear Waddell, PC's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2311.00 and reimbursement of expenses in the amount of \$191.01. The aggregate allowed amount equals \$2502.01. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1054.77 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 directly by the debtor after the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

2. 17-11003-A-13 JOHN/NANCY ALVA  
MHM-2  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.  
DISMISSED

3. [13-12504](#)-A-13 ROEL/ALMA CALO  
SL-2  
ROEL CALO/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden.

The court will grant the motion and approve the modification of the plan.

4. [17-12104](#)-A-13 ALBERT/PATRICIA ZEPEDA MOTION TO DISMISS CASE  
MHM-1 6-28-17 [[19](#)]  
MICHAEL MEYER/MV  
JEFFREY ROWE/Atty. for dbt.  
RESPONSIVE PLEADING\\

## Final Ruling

The case dismissed, the motion is denied as moot.

5. [17-11605](#)-A-13 OFELIA GARCIA  
MHM-1  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

6. [17-11611](#)-A-13 JOSE DIAZ MOTION TO DISMISS CASE  
MHM-1 6-14-17 [[17](#)]  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

## Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [17-11817](#)-A-13 KEVIN ROBERTS  
MHM-1  
  
SUSAN HEMB/Atty. for dbt.
- OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
6-22-17 [[19](#)]

## Final Ruling

**Matter:** Objection to Confirmation of Chapter 13 Plan

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

## MOOTNESS

Creditors and the trustee may file an objection to confirmation of the Chapter 13 plan within 7 days after the first date set for the creditors' meeting held under § 341 of the Bankruptcy Code. LBR 3015-

1(c)(4). But if the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Modifying the plan renders moot the pending objection to confirmation of the previously filed plan. Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). The debtor has filed a modified plan. The objection will be overruled as moot.

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

8. [17-11222](#)-A-13 ALEX/PRISCILLA PANG MOTION TO DISMISS CASE  
MHM-2 6-12-17 [[44](#)]  
MICHAEL MEYER/MV  
JERRY LOWE/Atty. for dbt.

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

#### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$3198.00.

#### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

9. 17-11222-A-13 ALEX/PRISCILLA PANG MOTION TO DISMISS CASE  
MHM-3 6-23-17 [[49](#)]  
MICHAEL MEYER/MV  
JERRY LOWE/Atty. for dbt.  
WITHDRAWN

## Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [13-12023](#)-A-13 DONALD/BRENDA SHERMAN CONTINUED OBJECTION TO NOTICE  
DRJ-4 OF MORTGAGE PAYMENT CHANGE  
DONALD SHERMAN/MV 5-18-17 [[62](#)]  
DAVID JENKINS/Atty. for dbt.  
CONTINUED TO 8/31/17 AT 9:00 a.m., ECF #77

## Final Ruling

Pursuant to this court's order, this matter has been continued to August 31, 2017, at 9:00 a.m.

11. 16-11025-A-13 TIM/CHERIE WILKINS MOTION FOR COMPENSATION BY THE  
FW-4 LAW OFFICE OF FEAR WADDELL,  
P.C. FOR PETER L. FEAR, DEBTORS  
ATTORNEY(S)  
6-14-17 [208]  
  
PETER FEAR/Atty. for dbt.

## Final Ruling

**Application:** Allowance of Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

## **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$53,559.50 and reimbursement of expenses in the amount of \$1,562.52.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

## **CIVIL MINUTE ORDER**

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

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

Fear Waddell, P.C.'s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$53,559.50 and reimbursement of expenses in the amount of \$1,562.52. The aggregate allowed amount equals \$55,122.02. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$55,122.02 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. [17-11027](#)-A-13 CLINTON/CYNTHIA  
JDM-1 RUTHERFORD  
CLINTON RUTHERFORD/MV  
JAMES MILLER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
6-13-17 [[27](#)]

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

13. [17-10427](#)-A-12 LUIS/ANGELA OLIVEIRA  
WW-14  
LUIS OLIVEIRA/MV  
RILEY WALTER/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM  
CHAPTER 12 PLAN  
5-30-17 [[105](#)]

**No tentative ruling.**

14. [17-12029](#)-A-13 SAMUEL/YOLANDA BLANCO  
PBB-1  
SAMUEL BLANCO/MV  
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
WESTAMERICA BANK  
6-22-17 [[15](#)]

**Final Ruling**

The court continues the hearing on this matter to August 24, 2017, at 9:00 a.m. for a supplemental declaration, which shall be filed no later than seven (7) days prior to the hearing. The debtors have not stated the vehicle's value in their moving papers. If the negative-equity portion of the claim is supported by the collateral's value in whole or in part, then the negative equity portion of the claim cannot be treated as unsecured in its entirety. This is true because section 506(a) applies equally to negative equity financing as it does to purchase money financing. (If the vehicle's value is less than the



PMSI portion of the claim, then the PMSI portion of the claim will be the amount of the claim that is treated as secured.) In addition, the movant should provide factual details regarding the existing balance of the loan owed to the respondent, and the dollar amount of this loan that is presently secured by a PMSI.

15. [15-14730](#)-A-13 PATRICIA SIMONIAN MOTION TO MODIFY PLAN  
FW-2 6-14-17 [[39](#)]  
PATRICIA SIMONIAN/MV  
GABRIEL WADDELL/Atty. for dbt.

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by 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 confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

16. [17-12533](#)-A-13 ALEX BECERRA MOTION TO EXTEND AUTOMATIC STAY  
JDR-1 7-6-17 [[9](#)]  
ALEX BECERRA/MV  
JEFFREY ROWE/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted except as to any creditor without proper notice of this motion

**Order:** Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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 except as to any creditor without proper notice of this motion.

17. [17-11635](#)-A-13 JESUS/ANNA SOTO  
MHM-1  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE  
6-20-17 [[20](#)]

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **CASE DISMISSAL**

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

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to

appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

18. [17-10138](#)-A-13 GASPAR/FRANCISCA MENDEZ MOTION TO DISMISS CASE  
MHM-2 6-15-17 [[47](#)]  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2475.

### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

19. [17-10244](#)-A-13 DANIEL AMADOR  
MHM-2  
MICHAEL MEYER/MV  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CASE  
5-24-17 [[54](#)]

**No tentative ruling.**

20. [17-12047](#)-A-13 TAMMY ABELS  
FW-1  
TAMMY ABELS/MV  
PETER FEAR/Atty. for dbt.  
WITHDRAWN

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
6-9-17 [[10](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

21. [17-11148](#)-A-13 PAUL/DARLENE HOLLAND  
WLG-2  
PAUL HOLLAND/MV  
NICHOLAS WAJDA/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
5-26-17 [[36](#)]

**Final Ruling**

**Motion:** Confirmation of a Chapter 13 Plan

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**CERTIFICATE OF SERVICE FILED JULY 20, 2017**

The moving party did not provide a sufficient period of notice of the hearing on the motion or the time fixed for filing objections. The service date for the most recent certificate of service is July 20, 2017. Federal Rule of Bankruptcy Procedure 2002(b) requires not less than 28 days' notice of the time fixed for filing objections and the hearing to consider confirmation of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 42 days' notice of the motion. LBR 3015-1(d). Creditors and parties in interest received less than 28 days' notice of the time fixed for filing objections, and the motion and notice of hearing were filed and served less than 42 days before the hearing.

**CERTIFICATE OF SERVICE FILED MAY 26, 2017**

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

The court previously denied confirmation, without prejudice, for

failure to properly serve all creditors with notice under Rule 2002(b). In that ruling, the court expressed its preference for use of the court's matrix in serving all creditors and parties in interest. The court incorporates the civil minutes from the July 7, 2017, hearing into this ruling by reference.

22. [16-13349](#)-A-13 THOMASITO DEL CASTILLO MOTION FOR COMPENSATION BY THE  
FW-1 LAW OFFICE OF FEAR WADDELL FOR  
GABRIEL J. WADDELL, DEBTORS  
ATTORNEY(S)  
6-27-17 [[30](#)]

PETER FEAR/Atty. for dbt.

### **Final Ruling**

**Application:** Allowance of Interim Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5891.00 and reimbursement of expenses in the amount of \$328.36.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

### **CIVIL MINUTE ORDER**

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

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

Fear Waddell P.C.'s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$5891.00 and reimbursement of expenses in the amount of \$328.36. The aggregate allowed amount equals \$6219.36. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5995.00 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 directly by the debtor after completion of the plan's term.

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.

23. [16-11950](#)-A-13 GENE/EVELYN FOX  
BDB-1  
GENE FOX/MV

BENNY BARCO/Atty. for dbt.  
RESPONSIVE PLEADING

PRE-TRIAL CONFERENCE RE:  
OBJECTION TO CLAIM OF POLLASKY  
TRUST, CLAIM NUMBER 2  
2-11-17 [[28](#)]

**No tentative ruling.**

24. [17-11850](#)-A-13 ANTHONY DIMAGGIO  
FW-2  
ANTHONY DIMAGGIO/MV  
GABRIEL WADDELL/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
5-30-17 [[16](#)]

**No tentative ruling.**

25. [17-11850](#)-A-13 ANTHONY DIMAGGIO  
MHM-1  
MICHAEL MEYER/MV  
GABRIEL WADDELL/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
6-28-17 [[30](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

26. [17-11652](#)-A-13 GREGORY/ROUZANA TOROSSIAN  
MHM-1  
MICHAEL MEYER/MV  
MICHAEL ARNOLD/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
6-14-17 [[32](#)]

**No tentative ruling.**

27. [12-60053](#)-A-13 DAVID VELAZCO  
TCS-2  
DAVID VELAZCO/MV  
NANCY KLEPAC/Atty. for dbt.  
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF FIA CARD  
SERVICES, N.A., CLAIM NUMBER 3  
6-19-17 [[25](#)]

**Tentative Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained in part, overruled in part

**Order:** Prepared by objecting party

**STATUTE OF LIMITATIONS DEFENSE**

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in

writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

### **TRUSTEE'S OPPOSITION**

The trustee opposes because the trustee has paid a total of \$7,050.67 towards this unsecured claim. Unsecured creditors are entitled to a 100% dividend under the confirmed plan. The distributions were proper. The trustee requests that "if Debtor prevails on the claim objection, the claim of [respondent] be allowed in the amount of \$7050.67, which is the amount that the Trustee has paid to date . . . ."

The court agrees with the trustee. The notice of filed claims was filed on July 17, 2013. ECF No. 21. Objections to claims should have been filed within 60 days after this date. This objection was filed late. Accordingly, the court will not prejudice the trustee by requiring the trustee to recover funds already paid. The claim will be allowed in the amount that has been paid and disallowed as to the balance of the claim.

### **CONCLUSION**

The objection will be sustained in part and overruled in part. The claim will be allowed in the amount that has been paid by the trustee, \$7050.67, and the remaining balance of the claim will be disallowed.

28. [16-12253](#)-A-13 MARLENE LOPEZ  
PBB-1  
MARLENE LOPEZ/MV  
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN  
6-5-17 [[20](#)]

### **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 confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.



29. [16-14259](#)-A-13 CHARLES BROWN AND LATASHA MOTION TO MODIFY PLAN  
TCS-2 DIXON-BROWN 6-5-17 [[43](#)]  
CHARLES BROWN/MV  
TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by 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 confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

30. [16-11369](#)-A-13 FRANCISCO ROJAS MOTION TO AVOID LIEN OF  
TOG-1 PRECISION RECOVERY ANALYTICS,  
FRANCISCO ROJAS/MV INC.  
6-10-17 [[22](#)]  
THOMAS GILLIS/Atty. for dbt.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**SERVICE PROBLEMS**

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the

responding party, Chase Manhattan Bank, USA N.A. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h) (1)-(3).

Service has been made on JPMorgan "Case" Bank, N.A., but no showing has been made that Chase Manhattan Bank USA N.A. and JPMorgan Chase Bank, N.A. have merged or are otherwise the same entity. Therefore, service on JPMorgan Chase Bank, N.A. does not suffice.

#### **RESPONDENT UNCLEAR**

The motion names Precision Recovery Analytics, Inc. as the respondent in the title of the motion. The body of the motion names Chase Manhattan Bank USA N.A. as the respondent. The prayer for relief names the latter respondent. Precision Recovery Analytics has also not been served.

The motion does not adequately set forth the relief or order sought. Fed. R. Bank. P. 9013. In a motion requesting relief that by its nature directly affects another party's rights, an unambiguously named respondent is an essential component of the relief requested. The court cannot grant adversarial relief in the abstract where the respondent's identity is unknown or ambiguous. Because the relief sought has not been adequately set forth, the court must deny the motion.

#### **CIVIL MINUTE ORDER**

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

The debtor's motion to avoid a lien has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

31. [17-10578](#)-A-13 OSCAR/NATALIE  
TCS-2 VILLAGOMEZ-LEMUS  
OSCAR VILLAGOMEZ-LEMUS/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO CONFIRM PLAN  
6-7-17 [[63](#)]

**No tentative ruling.**

32. [13-16684](#)-A-13 ROBERT/KAREN BAKER  
PK-3  
ROBERT BAKER/MV

MOTION TO SELL AND/OR MOTION  
FOR COMPENSATION FOR KELLER  
WILLIAMS, BROKER(S)  
7-5-17 [[82](#)]

PATRICK KAVANAGH/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Sell Property [Real Property]

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

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to the instructions below and approved as to form and content by the Chapter 13 trustee

**Property:** 4620 Foxboro Ave., Bakersfield, CA

**Buyer:** William Kotz and Lisa Kotz

**Sale Price:** \$175,000

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

**Other Terms:** The sale is to be a short sale. The second deed of trust holder, Bank of America, N.A., will agree to take \$4000 from the proceeds of sale in satisfaction of its lien

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).

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

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

33. [16-11792](#)-A-13 MICHAEL/LEAH CADY  
RLF-2  
MICHAEL CADY/MV  
SHANE REICH/Atty. for dbt.

MOTION TO MODIFY PLAN  
6-6-17 [[40](#)]

**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 confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

34. [16-13492](#)-A-13 DOUGLAS/LINDA HORWOOD  
SAH-2  
DOUGLAS HORWOOD/MV  
SUSAN HEMB/Atty. for dbt.

MOTION TO MODIFY PLAN  
5-31-17 [[27](#)]

**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 confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden.

The court will grant the motion and approve the modification of the plan.

35. [17-11894](#)-A-13 ANTONIO TINOCO MOTION TO DISMISS CASE  
MHM-1 6-23-17 [[31](#)]  
MICHAEL MEYER/MV  
DAVID JENKINS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

36. [17-11894](#)-A-13 ANTONIO TINOCO OBJECTION TO CONFIRMATION OF  
RCO-1 PLAN BY WELLS FARGO BANK, N.A.  
WELLS FARGO BANK, N.A./MV 6-2-17 [[18](#)]  
DAVID JENKINS/Atty. for dbt.  
JASON KOLBE/Atty. for mv.

**No tentative ruling.**

37. [15-13096](#)-A-13 CRYSTAL MONROY CERVANTES MOTION FOR COMPENSATION BY THE  
FW-7 LAW OFFICE OF FEAR WADDELL,  
P.C. DEBTORS ATTORNEY(S)  
6-27-17 [[141](#)]  
PETER FEAR/Atty. for dbt.

**Final Ruling**

**Application:** Allowance of Second Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

**COMPENSATION AND EXPENSES**

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$15,895.00 and reimbursement of expenses in the amount of \$47.09.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

#### **CIVIL MINUTE ORDER**

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

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

Fear Waddell's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$15,895.00 and reimbursement of expenses in the amount of \$47.09. The aggregate allowed amount equals \$15,942.09. As of the date of the application, the applicant held as settlement proceeds in the amount of \$7,250.00. The amount of \$8,692.09 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/settlement funds held by the applicant. The applicant is authorized to draw on any retainer/settlement funds 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.

38. [17-11697](#)-A-13 OSCAR ABUNDES AND  
MHM-1 GERTRUDEZ GONZALEZ  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
6-14-17 [[18](#)]

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

39. [17-11797](#)-A-13 MATTHEW WILLIAMS  
MHM-1  
MICHAEL MEYER/MV  
SUSAN HEMB/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
6-23-17 [[18](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.