

**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:** AUGUST 23, 2018

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

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

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

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

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

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

1. [18-12104](#)-A-13     **IN RE: DIANNA CONDELL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-30-2018    [[32](#)]

MARK ZIMMERMAN

**Tentative Ruling**

The installment of \$77 due July 24, 2018, has been paid. Should the subsequent installment of \$77 which is due August 23, 2018, not be paid by the time of this hearing, the case may be dismissed without further notice or hearing.

2. [18-12104](#)-A-13     **IN RE: DIANNA CONDELL**  
    [MHM-2](#)

MOTION TO DISMISS CASE  
7-16-2018    [[21](#)]

MICHAEL MEYER/MV  
MARK ZIMMERMAN  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

3. [18-12708](#)-A-13     **IN RE: JAMES/CELENA WATSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-6-2018    [[17](#)]

DAVID JENKINS

**Final Ruling**

The past due installment paid, the order to show cause is discharged.

4. [18-13019](#)-A-13     **IN RE: RENEE BURTON**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
7-31-2018    [\[10\]](#)

RENEE BURTON/MV  
SCOTT LYONS

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **EXTENSION OF THE STAY**

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

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

### **CIVIL MINUTE ORDER**

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

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

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

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

5. [17-13721](#)-A-13     **IN RE: JOHN/NANCY ALVA**  
[JRL-2](#)

OBJECTION TO CLAIM OF ACCLAIM CREDIT TECHNOLOGIES, CLAIM  
NUMBER 30  
7-20-2018    [[100](#)]

JOHN ALVA/MV  
JERRY LOWE

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no written opposition required

**Disposition:** Sustained

**Order:** Prepared by objecting party

Because less than 44 days' notice was provided for the hearing, the court will treat the objection as having been noticed under LBR 3007-1(b)(2).

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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).

### **LEGAL STANDARDS**

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. *See id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. *See id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. *See id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. *See In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each

creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

## **DISCUSSION**

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So the claim will be disallowed.

## **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 debtors' objection to claim 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 objection,

IT IS ORDERED that the objection is sustained. Claim no. 30 will be disallowed.

6. [17-14529](#)-A-13      **IN RE: BRIAN FOLLAND**  
[DRJ-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
4-13-2018    [[45](#)]

BRIAN FOLLAND/MV  
DAVID JENKINS  
RESPONSIVE PLEADING

**No Ruling**

7. [17-14529](#)-A-13      **IN RE: BRIAN FOLLAND**  
[DRJ-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF CIT BANK, N.A.  
5-10-2018    [[53](#)]

BRIAN FOLLAND/MV  
DAVID JENKINS  
RESPONSIVE PLEADING

**No Ruling**

8. [18-12130](#)-A-13     **IN RE: FERNANDO/MARY ROBERTO**  
[SL-1](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS  
ATTORNEY(S)  
7-12-2018    [[23](#)]

STEPHEN LABIAK

### **Tentative Ruling**

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

**Notice:** LBR 9014-1(f)(2); no 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). 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, Stephen Labiak has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5,690.00 and reimbursement of expenses in the amount of \$0.00. The confirmed plan reveals applicant's intent to opt-in to the flat fee under LBR 2016-1(c), but this intent was not effectuated. The applicant did not check the form plan's appropriate box to select the flat fee.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

### **CIVIL MINUTE ORDER**

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

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

Stephen Labiak's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$5,690.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$5,690.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5,690.00 shall be allowed as an administrative expense to be paid through the plan.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

9. [18-12336](#)-A-13     **IN RE: CLIFFORD LLOYD AND LAURA SIDSWORTH**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
7-30-2018    [[17](#)]

PETER BUNTING

**No Ruling**

10. [18-12336](#)-A-13     **IN RE: CLIFFORD LLOYD AND LAURA SIDSWORTH**  
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF DEPARTMENT OF THE  
TREASURY-INTERNAL REVENUE SERVICE (CLAIM #1)  
7-10-2018    [[12](#)]

CLIFFORD LLOYD/MV  
PETER BUNTING

**Final Ruling**

**Motion:** Value Collateral [Personal Property; Non-vehicular]

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

**Disposition:** Granted

**Order:** Civil minute order

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

## **VALUATION OF COLLATERAL**

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

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

In this case, the debtor seeks to value collateral consisting of personal property described as all their personal property. The lien against such personal property is not a purchase money security interest. The court values the collateral at \$14,612.08.

## **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as all personal property owned by the debtors has a value of \$14,612.08. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$14,612.08 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.



11. [18-11439](#)-A-13     **IN RE: BRANDON/LESLIE SMART**  
[MHM-2](#)

MOTION TO DISMISS CASE  
7-25-2018    [\[33\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

12. [16-13241](#)-A-13     **IN RE: MONIQUE BOOKOUT**  
[RSW-5](#)

MOTION TO VACATE DISMISSAL OF CASE  
8-1-2018    [\[96\]](#)

MONIQUE BOOKOUT/MV  
ROBERT WILLIAMS  
DISMISSED: 07/18/2018

### **Tentative Ruling**

**Motion:** Vacate Dismissal of Case

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

**Disposition:** Granted

**Order:** Prepared by the debtor's counsel

The movant used the notice procedure of LBR 9014-1(f)(1) but only gave 22 days' notice of the hearing. As a result, the court will treat the hearing as having been noticed under LBR 9014-1(f)(2) and will permit opposition to be raised orally at the hearing.

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).

Rule 60(b) permits a motion for relief from a judgment or order to be brought within a reasonable time not to exceed one year if the ground for the motion is "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1), *incorporated by* Fed. R. Bankr. P. 9024.

For the factual reasons stated in declaration of the debtor, the court will grant the motion on grounds that the dismissal was the result of mistake and excusable neglect.

13. [18-10543](#)-A-13     **IN RE: CHARLES MASSEY**  
[MHM-5](#)

CONTINUED MOTION TO DISMISS CASE  
7-6-2018    [[52](#)]

MICHAEL MEYER/MV  
PATRICK KAVANAGH  
RESPONSIVE PLEADING

**No Ruling**

14. [17-11850](#)-A-13     **IN RE: ANTHONY DIMAGGIO**  
[EGS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-20-2018    [[71](#)]

BAYVIEW LOAN SERVICING, LLC/MV  
GABRIEL WADDELL  
EDWARD SCHLOSS/ATTY. FOR MV.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

15. [17-11850](#)-A-13     **IN RE: ANTHONY DIMAGGIO**  
[FW-4](#)

MOTION TO MODIFY PLAN  
7-6-2018    [[63](#)]

ANTHONY DIMAGGIO/MV  
GABRIEL WADDELL  
RESPONSIVE PLEADING

**No Ruling**

16. [13-17754](#)-A-13     **IN RE: EDUARDO SOLIS AND ROSA CASTILLO**  
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)  
7-25-2018    [[107](#)]

GABRIEL WADDELL

### **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, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,628.50 and reimbursement of expenses in the amount of \$123.03. 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 any prior applications for fees and costs the court has approved on an interim basis under § 331.

### **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 final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2,628.50 and reimbursement of expenses in the amount of \$123.03. The aggregate allowed amount equals \$2,751.53. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2,751.53 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

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.

17. [17-13954](#)-A-13     **IN RE: LESLIE HARRIS**  
[FW-1](#)

MOTION TO MODIFY PLAN  
6-25-2018    [[17](#)]  
  
LESLIE HARRIS/MV  
GABRIEL WADDELL  
PLAN WITHDRAWN

**Final Ruling**

The plan withdrawn, the motion is denied as moot.

18. [16-13155](#)-A-13     **IN RE: RYAN/MICHAEL SMITH**  
[JDM-1](#)

MOTION TO MODIFY PLAN  
7-16-2018    [[36](#)]  
  
RYAN SMITH/MV  
JAMES MILLER  
RESPONSIVE PLEADING

**Final Ruling**

A Corrected First Amended Plan having been filed August 6, 2018, the motion is denied as moot.

19. [17-13065](#)-A-13     **IN RE: AMANDEEP RANDHAWA**  
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)  
7-13-2018    [[128](#)]

PETER FEAR

### **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 \$20,006.00 and reimbursement of expenses in the amount of \$1,014.18.

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 \$20,006.00 and reimbursement of expenses in the amount of \$1,014.18. The aggregate allowed amount equals \$21,020.18. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$21,020.18 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 or as otherwise provided by the plan. 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.

20. [18-13072](#)-A-13     **IN RE: CHARLES BLANKENSHIP**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
8-10-2018    [\[17\]](#)

CHARLES BLANKENSHIP/MV  
CHARLES BLANKENSHIP/ATTY. FOR MV.

**No Ruling**

21. [18-12173](#)-A-13     **IN RE: VICENTE ALCALA AND JOSEFINA HERNANDEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
7-17-2018    [\[22\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**No Ruling**

22. [18-12375](#)-A-13     **IN RE: GREG/RANDA HALL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-18-2018    [[16](#)]

MARK ZIMMERMAN  
\$310.00 FINAL INSTALLMENT PAYMENT 7/24/18

**Final Ruling**

The installment fees paid in full, the order to show cause is discharged.

23. [18-11388](#)-A-13     **IN RE: RAYMOND AVILES**  
[JDR-1](#)

MOTION TO CONFIRM PLAN  
6-26-2018    [[29](#)]

RAYMOND AVILES/MV  
JEFFREY ROWE  
RESPONSIVE PLEADING

**No Ruling**

24. [17-14292](#)-A-13     **IN RE: JUAN MEDINA- HERRERA AND STEFANIEROSE**  
MEDINA  
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE  
6-29-2018    [[72](#)]

MICHAEL MEYER/MV  
NEIL SCHWARTZ  
RESPONSIVE PLEADING

**No Ruling**

25. [17-14292](#)-A-13     **IN RE: JUAN MEDINA- HERRERA AND STEFANIEROSE**  
MEDINA  
[NES-3](#)

MOTION TO CONFIRM PLAN  
7-5-2018    [\[78\]](#)

JUAN MEDINA- HERRERA/MV  
NEIL SCHWARTZ

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

26. [18-11292](#)-A-13     **IN RE: ANGEL PEREZ**  
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF WESTAMERICA BANK  
7-18-2018    [\[21\]](#)

ANGEL PEREZ/MV  
TIMOTHY SPRINGER

### **Final Ruling**

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

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

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before



the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **VALUATION OF COLLATERAL**

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2016 Ford Titanium. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$18,900.00.

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2016 Ford Titanium has a value of \$18,900.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$18,900.00 equal

to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

27. [18-13096](#)-A-13     **IN RE: CATHERINE GARCIA**  
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
8-7-2018    [[9](#)]

CATHERINE GARCIA/MV  
PETER BUNTING

**No Ruling**