

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

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

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: SEPTEMBER 17, 2019
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

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

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

1. [18-15100](#)-A-13 **IN RE: ANGELINA LOPEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
8-19-2019 [\[50\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

2. [19-12500](#)-A-13 **IN RE: STEPHANI MASTERS**
[SL-1](#)

MOTION TO CONFIRM PLAN
7-30-2019 [\[24\]](#)

STEPHANI MASTERS/MV
SCOTT LYONS

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

3. [19-11701](#)-A-13 **IN RE: RAMON DIAZ**
[MHM-2](#)

MOTION TO DISMISS CASE
7-30-2019 [\[33\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

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 trustee moves to dismiss this chapter 13 case based on the debtor's failure to confirm a Chapter 13 plan.

Debtor filed a Motion To Confirm Amended Chapter 13 plan set for hearing the same day as the hearing on this Motion. ECF Nos. 26, 28. A review of the docket shows the court has granted that motion.

The debtor having confirmed a Chapter 13 plan and appearing to be actively prosecuting the case, the Motion is denied without prejudice.

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 denied without prejudice.

4. [19-11701](#)-A-13 **IN RE: RAMON DIAZ**
[TOG-1](#)

MOTION TO CONFIRM PLAN
7-26-2019 [\[26\]](#)

RAMON DIAZ/MV
THOMAS GILLIS

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

5. [19-11701](#)-A-13 **IN RE: RAMON DIAZ**
[TOG-2](#)

MOTION TO VALUE COLLATERAL OF TD AUTO FINANCE
8-1-2019 [\[37\]](#)

RAMON DIAZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

The parties entered into a Stipulation valuing the collateral at \$27,359.00. ECF No. 46. The Stipulation further provided that the Matter may be removed from the calendar. The matter is deemed voluntarily dismissed, and the court drops the matter from calendar.

6. [19-12903](#)-A-13 **IN RE: ROBERT/DARLENE AGUINAGA**
[MHM-2](#)

MOTION TO DISMISS CASE
8-8-2019 [\[34\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

7. [19-12903](#)-A-13 **IN RE: ROBERT/DARLENE AGUINAGA**
[MHM-3](#)

MOTION TO DISMISS CASE
8-8-2019 [\[38\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN

Final Ruling

Motion: Dismiss Chapter 13 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

Section 1308 of the Bankruptcy Code provides: "Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a).

The debtor has failed to comply with this tax-filing requirement. The debtor failed to file 2016, 2017, and 2018 state tax returns. ECF No. 40. The court will dismiss this case pursuant to § 1307(e).

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 based on the debtor's failure to comply with 11 U.S.C. § 1308(a)'s tax-filing requirement. The court hereby dismisses this case.

8. [19-12606](#)-A-13 **IN RE: JUAN/MARIA QUEVEDO**
[MHM-1](#)

MOTION TO DISMISS CASE
8-12-2019 [[41](#)]

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

9. [19-12606](#)-A-13 **IN RE: JUAN/MARIA QUEVEDO**
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF NOBLE CREDIT UNION
8-7-2019 [[29](#)]

JUAN QUEVEDO/MV
PETER BUNTING

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 Ram Crew Cab SLT. 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 \$26,843.00.

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 Ram Crew Cab SLT has a value of \$26,843.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$26,843.00 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.

10. [19-12606](#)-A-13 **IN RE: JUAN/MARIA QUEVEDO**
[PBB-3](#)

MOTION TO PLAN
8-7-2019 [\[34\]](#)

JUAN QUEVEDO/MV
PETER BUNTING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

11. [19-12709](#)-A-13 **IN RE: HANS YEAGER**
[MHM-1](#)

MOTION TO DISMISS CASE
8-16-2019 [\[13\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

12. [18-14316](#)-A-13 **IN RE: ALLISON HOPKINS**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
8-14-2019 [\[18\]](#)

GABRIEL WADDELL

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 \$3,437.00 and reimbursement of expenses in the amount of \$376.33.

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 \$3,437.00 and reimbursement of expenses in the amount of \$376.33. The aggregate allowed amount equals \$3,813.33.

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.

13. [14-13417](#)-A-12 **IN RE: DIMAS/ROSA COELHO**
[TCS-12](#)

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

DIMAS COELHO/MV
NANCY KLEPAC
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

14. [19-12620](#)-A-13 **IN RE: ANDREA MONROVIA**
[MHM-2](#)

MOTION TO DISMISS CASE
8-15-2019 [[47](#)]

MICHAEL MEYER/MV
DISMISSED 8/16/19

Final Ruling

The case having been dismissed, this matter will be denied as moot.

15. [19-12728](#)-A-13 **IN RE: DAVID MARTIN**
[MHM-2](#)

AMENDED MOTION TO DISMISS CASE
8-13-2019 [\[33\]](#)

MICHAEL MEYER/MV
PETER NISSON

Final Ruling

Motion: Dismiss Chapter 13 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

Section 1308 of the Bankruptcy Code provides: "Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a).

The debtor has failed to comply with this tax-filing requirement. The debtor failed to file 2015 through 2018 state and federal tax returns. The court will dismiss this case pursuant to § 1307(e).

The debtor has also failed to provide the trustee with a required tax return (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

Additionally, for the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

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, and the court hereby dismisses this case.

16. [19-12931](#)-A-13 **IN RE: JOHN NEUFIELD**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
8-30-2019 [\[21\]](#)

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: the hearing on the Objection is continued to October 17, 2019, at 9:00a.m.

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The Chapter 13 trustee, whom filed this Objection, requests the hearing on the Objection be continued until after the trustee's motion to dismiss is heard.

The court shall continue the hearing on the Objection to October 17, 2019, at 9:00a.m. to be heard alongside the dismissal motion.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the hearing on the Objection is continued to October 17, 2019, at 9:00a.m.

17. [19-10434](#)-A-13 **IN RE: MARIA QUIROZ**
[MHM-2](#)

MOTION TO DISMISS CASE
8-2-2019 [\[79\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

18. [19-10438](#)-A-13 **IN RE: JOSE/JENNIFER RODRIGUEZ**
[NES-1](#)

MOTION TO CONFIRM PLAN
7-31-2019 [\[42\]](#)

JOSE RODRIGUEZ/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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 Chapter 13 trustee opposes confirmation on the grounds that the plan payment is short \$147.28, and that the plan does not provide all debtors' disposable income for the applicable commitment period.

The debtors filed a Response asserting that amended Schedules I and J were filed, along with an amended Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Chapter 13 Calculation of Your Disposable Income, which together should resolve the majority of trustee's grounds for opposition.

Those amended documents were filed on September 3, 2019. ECF No. 53.

The debtors also propose increasing the plan payment in the language of the order confirming plan.

Despite the trustee's opposition, it appears the current plan is confirmable with changes to the plan made in the order confirming. The debtor has agreed to such changes. The court will confirm the plan as modified by the changes that the trustee proposed.

19. [19-12838](#)-A-13 **IN RE: GARY GOODMAN**
[MHM-2](#)

MOTION TO DISMISS CASE
8-15-2019 [\[27\]](#)

MICHAEL MEYER/MV
PHILLIP GILLET

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

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 filed this Motion seeking dismissal of the case based on debtor's unreasonable delay. The Chapter 13 trustee argues unreasonable delay exists because the debtor's Schedules A/B and D, as well as debtor's Official Forms 122C-1 and 122C-2, contained inaccuracies. The Chapter 13 trustee also seeks dismissal on the basis that debtor's certificate of credit counseling was completed more than 180 days before filing.

On September 3, 2019, debtor's counsel Phillip Gillet, Jr., filed his own declaration in opposition to the motion. ECF No. 34. The Declaration notes that a new credit counseling certificate was filed, along with Amended Schedules A/B and D, and Official Forms 122C-1 and 122C-2. ECF Nos. 33, 41.

An Objection To Confirmation was filed by creditor TD Auto Finance LLC, opposing confirmation of debtor's Chapter 13 plan. ECF No. 19. After a hearing on that Objection, the court issued an Order continuing the hearing to October 3, 2019, and requiring either a written response or modified plan filed by the debtor. ECF No. 40.

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 denied without prejudice.

20. [18-14443](#)-A-13 **IN RE: JOSE MERAS**
[MHM-3](#)

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

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

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

This is the fourth hearing on this Motion. At the prior hearing, the court continued the hearing to be heard alongside debtor's Motion To Confirm. ECF No 125.

A review of the docket shows that the court has granted debtor's motion and confirmed the Modified Plan.

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 denied without prejudice.

21. [18-14443](#)-A-13 **IN RE: JOSE MERAS**
[PBB-4](#)

CONTINUED MOTION TO CONFIRM PLAN
7-3-2019 [\[99\]](#)

JOSE MERAS/MV
PETER BUNTING
RESPONSIVE PLEADING

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

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).

This is the second hearing on the Motion To Confirm Modified Plan. After the first hearing, the court issued an Order requiring the debtor to file a supplementary declaration verifying income and expense amounts, and providing an estimate of payoff for priority claims. ECF No. 124.

The debtor filed his declaration on August 23, 2019. ECF No. 132. The trustee's counsel filed a declaration indicating non-opposition to the Motion so long as changes to the plan are made in the order confirming. The court will approve the modification of the plan with the changes that the trustee proposed.

22. [19-12744](#)-A-13 **IN RE: EDGAR BAUTISTA**

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-7-2019 [\[23\]](#)

PETER BUNTING
\$120.00 PAID ON 8/28/19

Final Ruling

Matter: Order to Show Cause re Failure To Pay Filing Fees

An Order To Show Cause was issued on August 7, 2019, based on the debtor, Edgar Bautista's failure to pay the filing fee installment of \$79.00 due July 29, 2019.

A review of the docket shows debtor has paid \$190.00 to date and is current in installment payments.

Therefore, the Order to Show Cause is discharged.

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 Order to Show Cause has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Order to Show Cause is discharged.

23. [19-12744](#)-A-13 **IN RE: EDGAR BAUTISTA**
[MHM-2](#)

MOTION TO DISMISS CASE
8-13-2019 [\[28\]](#)

MICHAEL MEYER/MV
PETER BUNTING

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1,100.00.

Additionally, the debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

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, and for delinquency in plan payments. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

24. [19-12647](#)-A-13 **IN RE: JACK ROSS**
[MHM-2](#)

MOTION TO DISMISS CASE
8-7-2019 [\[22\]](#)

MICHAEL MEYER/MV
YELENA GUREVICH
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

25. [19-12848](#)-A-13 **IN RE: JOHN LOWE**
[MHM-2](#)

MOTION TO DISMISS CASE
8-13-2019 [\[21\]](#)

MICHAEL MEYER/MV
JERRY LOWE

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

26. [19-13448](#)-A-13 **IN RE: DUSTIN GOMES**
[PR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-31-2019 [\[17\]](#)

MACE PROPERTIES, LLC/MV
THOMAS GILLIS
PATRICK RIAZI/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 21501 Johnson Avenue, Hilmar, California

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).

STAY RELIEF

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

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.

Mace Properties, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 21501 Johnson Avenue, Hilmar, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

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

27. [19-13151](#)-A-13 **IN RE: KRISTIN VOOLSTRA**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PRESTIGE FINANCIAL
SERVICES
8-20-2019 [\[20\]](#)

PRESTIGE FINANCIAL SERVICES/MV
TIMOTHY SPRINGER
BONNI MANTOVANI/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The present Objection essentially relies on the determination of creditor Prestige Financial Services' ("Creditor") claim. The proposed plan provides for the secured portion of the claim in the amount of \$6,500.00. Creditor argues its claim is fully secured in the amount of \$15,540.52.

Creditor filed Proof of Claim, No. 1. No motion to value the Creditor's secured claim or objection to claim has been filed by the debtor. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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.

Prestige Financial Services' objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

28. [17-12655](#)-A-13 **IN RE: TERRY/JUDY KYNER**
[NES-1](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS
ATTORNEY(S)
8-5-2019 [\[27\]](#)

NEIL SCHWARTZ

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, Neil Schwartz has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5,512.50 and reimbursement of expenses in the amount of \$413.00.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$5,512.00 and reimbursement of expenses in the amount of \$413.00. The aggregate allowed amount equals \$5,925.50.

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.

29. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-6](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
8-21-2019 [\[46\]](#)

FRANK FAGUNDES/MV
RILEY WALTER

No Tentative Ruling

Application: Motion for Order Authorizing Rejection of Executory Contract

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

Disposition: No Tentative Ruling

Order: Civil minute order

The Motion seeks authority to reject a loan agreement, entitled "General Off-Bill And On-Bill Financing Loan Agreement, between the debtor and Pacific, Gas, & Electric. The agreement was for the purchase of a 72" fan cooling system, but also incorporated ongoing utility service costs.

A contract is executory only if one party's failure to perform its obligation would excuse the other party's performance. *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941(9th Cir. 2007).

Here, the debtor describes the contract as a "Loan Agreement," and not a lease a agreement. ECF No. 49. A review of the agreement itself supports the debtor's characterization of the contract as a loan agreement. While the contract references the ongoing services, the agreement provides that the loan shall be paid notwithstanding any services ever being provided. Exhibit A, ECF No. 50 at p. 2, ¶ 7. Furthermore, the lender has the option of seeking payment for services separate from the payment of the loan. *Id.*, ¶ 8.

30. [19-12657](#)-A-13 **IN RE: CORINNA DE VELBISS**
[MHM-1](#)

MOTION TO DISMISS CASE
8-16-2019 [\[21\]](#)

MICHAEL MEYER/MV
NIMA VOKSHORI

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 a required tax return (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); Fed. R. Bankr. P. 4002(b)(2)(A).

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A)(i); Fed. R. Bankr. P. 4002(b)(3).

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.

31. [19-12757](#)-A-13 **IN RE: STEVE GONZALES AND SANDY GONZALEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
8-19-2019 [\[19\]](#)

MICHAEL MEYER/MV
THOMAS MOORE

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

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); Fed. R. Bankr. P. 4002(b)(2)(A).

Section 1308 of the Bankruptcy Code provides: "Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a). The debtor has failed to comply with this tax-filing requirement.

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.

32. [17-14459](#)-A-13 **IN RE: VANESSA IBANEZ**
[PBB-3](#)

MOTION TO MODIFY PLAN
7-25-2019 [\[44\]](#)

VANESSA IBANEZ/MV
PETER BUNTING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1)

protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); *see also In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

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

33. [19-12660](#)-A-13 **IN RE: JORGE/MELISSA VELEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
8-20-2019 [[33](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

34. [19-12860](#)-A-13 **IN RE: MILISSA ONEY**
[MHM-1](#)

MOTION TO DISMISS CASE
8-19-2019 [[14](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

35. [19-12961](#)-A-13 **IN RE: LEONARDO GONZALEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
8-30-2019 [\[17\]](#)

SCOTT LYONS

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The Chapter 13 trustee opposes confirmation of the plan on the grounds that Debtor failed to provide the Class 1 Checklist for creditor Matadors Community, failed to file complete and accurate Schedules (A/B, D, E/F, and H), and failed to file a complete and accurate Official Form 122C-1.

The above stated grounds constitute unreasonable delay. 11 U.S.C. § 1307(c)(1).

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

36. [18-11467](#)-A-13 **IN RE: FRANKLIN BAER**
[KSB-6](#)

MOTION TO MODIFY PLAN
7-30-2019 [\[86\]](#)

FRANKLIN BAER/MV
KELLY BRESSO

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

37. [19-12168](#)-A-13 **IN RE: SANDRA BOMBITA**
[MHM-3](#)

MOTION TO DISMISS CASE
8-9-2019 [\[54\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

Tentative 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

Local Bankruptcy Rule 3015-1(b)(6) requires Debtor to provide the Class 1 Checklist and Authorization to Release Information forms to Trustee. Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms.

Additionally, debtor's statement of financial affairs is incorrect because she is still married.

The Trustee also argues debtor is not eligible for Chapter 13 relief pursuant to 11 U.S.C. § 109(e). Debtor is unemployed, and testified her only income is a possible \$1,750.00 monthly contribution from her ex-husband.

Since the filing of this Motion, the debtor filed the Declaration of her ex-husband providing testimony that he is willing to commit \$2,654.00 monthly for five years. ECF No. 64. At the August 28, 2019, hearing on the trustee's Objection to Confirmation, the court considered the aforementioned income and overruled the trustee's Objection. ECF Nos. 65, 67.

However, Debtor has not filed a responsive pleading to the Motion.

In the least, debtor's failure to file a Class 1 Checklist and amended Statement of Financial Affairs is unreasonable delay and 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.

38. [19-12668](#)-A-13 **IN RE: MARCO CISNEROS AND VERONICA ESTRADA**
[MHM-2](#)

MOTION TO DISMISS CASE
8-12-2019 [\[33\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

39. [19-12869](#)-A-13 **IN RE: KENNETH CARTER**
[MHM-1](#)

MOTION TO DISMISS CASE
8-19-2019 [\[18\]](#)

MICHAEL MEYER/MV
STEVEN ALPERT
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

40. [15-11870](#)-A-13 **IN RE: GLENDA LANDIN**
[SL-1](#)

CONTINUED MOTION TO INCUR DEBT
8-13-2019 [\[57\]](#)

GLENDA LANDIN/MV
SCOTT LYONS

Tentative Ruling

Motion: Approve New Debt [Vehicle Loan]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Prepared by moving party

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

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. In re Clemons, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, no agreement for financing was filed along with the Motion. At the end of Exhibit B, which is the proposed sales contract for the

debtor's new vehicle, there is a fax cover sheet with "Rate 8.95% 60 months" and "\$382.29" written. ECF No. 60. Based on Exhibit B, it appears there is no formal agreement, but rather a mere estimate provided.

The Motion requests an order authorizing the debtors to incur new debt "for the purchase of a new vehicle of up to \$20,359.09." No mention of any terms is included.

Based on the evidence provided, the Motion is denied without prejudice.

41. [19-12872](#)-A-13 **IN RE: ANTHONY RAMIREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
8-12-2019 [\[14\]](#)

MICHAEL MEYER/MV
NICHOLAS WAJDA
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

42. [17-10573](#)-A-13 **IN RE: JOEL/BETTY HILL**
[NFS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-19-2019 [\[41\]](#)

BANK OF NEW YORK MELLON TRUST
COMPANY, N.A./MV
TIMOTHY SPRINGER
NATHAN SMITH/ATTY. FOR MV.

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

43. [19-12678](#)-A-13 **IN RE: ANTONIO HERNANDEZ SILVA**
[MHM-2](#)

MOTION TO DISMISS CASE
8-8-2019 [\[28\]](#)

MICHAEL MEYER/MV
JEFFREY ROWE

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

44. [19-12679](#)-A-13 **IN RE: NAEEM/SAIMA QARNI**
[MHM-2](#)

MOTION TO DISMISS CASE
8-19-2019 [\[44\]](#)

MICHAEL MEYER/MV
NICHOLAS ANIOTZBEHERE

No Tentative Ruling

Motion: Dismiss Case

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

Disposition: No Tentative Ruling

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 filed the present Motion seeking dismissal of the case because (1) debtor did not file pay advices for the 60 days' before the date of filing, (2) debtor did not file an accurate Schedule H, (3) debtor did not provide 6 months of bank statements, (4) debtor did not provide a bank sheet and cash flow statement, (5) and debtor did not provide business profit and loss statements for 6 months prior to filing.

The debtors filed an Opposition to the Motion on September 3, 2019. ECF No. 73. The debtors argue that all necessary documents have been filed, Schedule H amended, the trustee had all necessary information at the 341 Meeting of Creditors, and there was no prejudicial delay caused to creditors.

The debtors also request the court waive the requirement of 11 U.S.C. § 521(i)(1) to provide all 11 U.S.C. § 521(a) documents within 45 days of filing the petition. The grounds for this requested relief include debtors' and their counsel's belief that all necessary documents had been timely provided, and that the necessary financial information was provided on Schedule I.

The trustee filed a Reply to the debtors' Opposition on September 6, 2019. ECF No. 80. The trustee argues that he has no power to stop automatic dismissal, and that there was no obligation on his part to inform the debtors what to still needed to be filed. The trustee asserts further he has no position as to whether the court should waive the 45 day requirement of 11 U.S.C. § 521.

Creditor's Limited Opposition

A Limited Opposition was filed by creditor Gulamnabi Vahora, M.D, Ph.D. ("Creditor") on September 3, 2019. ECF No. 76. Creditor argues that the case should be converted to Chapter 7, rather than dismissed, in order to preserve the Estate and allow orderly administration.

The Trustee filed a Reply to the Creditor's Limited Opposition on September 6, 2019. ECF No. 82. The trustee notes the Creditor brought an Objection to Confirmation arguing that the debtors' business had greater value than the \$0.00 scheduled. However, the trustee expresses no firm position on whether certain assets of the Estate have been undervalued, and whether conversion is in the best interest of creditors and the Estate.

DISCUSSION

The Bankruptcy Code provides for automatic dismissal of the case if the debtor does not "file all of the information required under subsection [521](a)(1) within 45 days after the date of the filing of the petition." 11 U.S.C. § 521(i)(1). The court has discretion to "order otherwise" "where a bankruptcy court reasonably determines that there is no continuing need for the information or waiver of the filing requirement is necessary to prevent automatic dismissal from furthering a debtor's abusive conduct, the court has discretion to take such an action." *In re Warren*, 568 F.3d 1113, 1119 (9th Cir. 2009).

Here, the debtors failed to file within 45 days copies of all payment advices or other evidence of payment received within 60 days before the date of filing of the petition. ECF No. 46. Thus, the debtor did not file all information required by 11 U.S.C. § 521(a).

Furthermore, no party alleges that dismissal would further abusive conduct on the part of the debtors.

Thus, the sole remaining inquiry appears to be whether there is no continuing need for the information.

45. [18-14586](#)-A-13 **IN RE: JAMES/LAURA JORGENSEN**
[NEA-1](#)

CONTINUED MOTION TO CONFIRM PLAN
1-9-2019 [\[31\]](#)

JAMES JORGENSEN/MV
NICHOLAS ANIOTZBEHERE
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

REVIEW OF CONTESTED MATTER HISTORY

The present Contested Matter has dragged on for roughly 8 months. The debtors filed this Motion To Confirm on January 9, 2019. ECF No. 31.

Creditors Donald Aluisi and Karen Aluisi filed an Objection on February 14, 2019. ECF No. 64. Creditors oppose confirmation on the grounds that the plan was proposed in bad faith because (1) the debtors entered into two refinances before filing without disclosing them on the petition; (2) the debts in this case are not significant and debtors intended to avoid Creditor's debt; and (3) a plan should not be confirmed until discovery is allowed.

The hearing on the Motion was continued several time to allow discovery. ECF Nos. 74, 92, 97, 104, 112. The hearing was also continued in tandem with Status Conferences on an adversary Proceeding, No. 19-01026, commenced by Creditor on February 16, 2109.

On August 28, 2019, Creditor filed a Supplemental Brief. ECF No. 115. Creditor now cites to 11 U.S.C. §§ 1325(a)(7) and not (a)(3), but the crux of the argument remains that the debtors have proceeded

in bad faith. Creditor argues that the following facts show bad faith: (1) Debtor refinanced their primary residence in November 2017 for \$155,000.00; (2) Debtor paid claims of \$8,977.76 and \$23,844.07 with the 2017 refinancing funds; (3) Debtor refinanced their primary residence in September 2018 for \$204,000.00; (4) Debtor paid claims of \$25,256.21 and \$16,076.78 with the 2018 refinancing funds; (5) pre-petition, debtors held a note worth \$92,293.00.

The debtors filed a Supplement Brief on September 11, 2019. ECF No. 119. The debtors argue that Creditor should be barred from asserting the petition was filed in bad faith because previously they only argued the plan was filed in bad faith. Debtors also assert they proceeded in good faith, and have amended their schedules to reflect the financing obtained.

DISCUSSION

Creditor presents two main arguments: (1) the case or plan was filed in bad faith because debtors refinanced their homes and paid certain debts, and (2) the case or plan was filed in bad faith because the debtors did not have to file bankruptcy and could have paid their debts outside bankruptcy.

To the first argument, Creditor does not describe what action is being taken to avoid alleged preferences. Notably, the present plan proposes a 100% dividend to unsecured claims. With all claims being paid, it is unclear these payments would be avoidable.

Debtors did not incur debt to payoff certain claims and then cheat other creditors out of being paid. The plan proposed is 100%.

Creditor's second argument is not convincing. There are a multitude of good faith reasons why a debtor may desire Chapter 13 relief despite potentially being able to satisfy claims through other means.

The court finds that the debtors have sustained their burden of showing all statutory requirements of confirmation, and the court will approve confirmation of the plan.

46. [19-12386](#)-A-13 **IN RE: CRISPIN RODRIGUEZ**
[SL-1](#)

MOTION TO CONFIRM PLAN
7-24-2019 [\[26\]](#)

CRISPIN RODRIGUEZ/MV
SCOTT LYONS
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). Creditor Richard Niemi and Kathleen Niemi holding a secured claim ("Creditor") opposes the motion, objecting to the modification.

Creditor argues the Modified Plan (1) provides insufficient interest on its claim, (2) is infeasible because the proposed payments do not mathematically compute to Creditor's claim being paid in full, and (3) is infeasible because debtor's Amended Schedule J does not account for self-employment taxes.

The plan's interest rate on a secured claim should be evaluated under the principles established in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The court in *Till* held that the "prime-plus or formula rate best comports with the purposes of the Bankruptcy Code." *Till*, 541 U.S. at 480.

The *Till* Court found that "[i]t is sufficient for our purposes to note that, under 11 U.S.C. § 1325(a)(6), a court may not approve a plan unless, after considering all creditors' objections and receiving the advice of the trustee, the judge is persuaded that 'the debtor will be able to make all payments under the plan and to comply with the plan.' Together with the cramdown provision, this requirement obligates the court to select a rate high enough to compensate the creditor for its risk but not so high as to doom the plan. If the court determines that the likelihood of default is so high as to necessitate an 'eye-popping' interest rate, the plan probably should not be confirmed." *Id.* (citations omitted).

"The appropriate size of that risk adjustment depends, of course, on such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." *Id.* at 479. Without deciding the issue of the proper scale of the risk adjustment, the plurality opinion noted that other courts have generally approved upward adjustments of 1% to 3% to the interest rate. See *id.* at 480.

Here, the plan provides for an interest rate of 5% on the objecting creditor's class 2 secured claim. The court takes judicial notice of the prime rate of interest, 5.25%, as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., September 13, 2019, http://online.wsj.com/mdc/public/page/mdc_bonds.html. Fed. R. Bankr. P. 201(b)(2).

The appropriate interest rate should be about 1% to 2% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the creditor that would warrant upward adjustment. So the plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement. The proper interest rate on this class 2 claim should be at least 6.25%.

Additionally, Creditor's arguments as to feasibility are well-taken. Even under the insufficient interest rate of 5%, the payment of \$2,104.72 would need to be greater to pay off the claim of \$121,817.36. Furthermore, debtor's omission of self-employment taxes on Amended Schedule J shows the debtor's disposable income as represented is not accurate. The plan is not confirmable. 11 U.S.C. § 1325(a)(6).

47. [19-13086](#)-A-13 **IN RE: GARY/JANET BOTHUN**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
8-29-2019 [\[20\]](#)

DAVID JENKINS

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The Chapter 13 trustee filed this Objection on "all grounds," noting limited information has been provided to date to allow more specific objections. ECF No. 20. The trustee requests the Objection be continued until after the trustee's Motion To Dismiss is heard.

The debtors filed a Response stating that the petition and schedules have been amended to address certain grounds for opposition, that a liquidation analysis has been prepared, and that the facts have been clarified for the trustee.

The court shall continue the hearing on the objection is continued to September 26, 2019, at 9:00a.m.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the hearing on the objection is continued to September 26, 2019, at 9:00a.m.

48. [19-13087](#)-A-13 **IN RE: DAVID/NANCY CASTRO**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF NOBLE CREDIT UNION
8-13-2019 [\[16\]](#)

DAVID CASTRO/MV
PETER BUNTING

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 2014 Buick Enclave Leather. 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 \$19,263.00.

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 2014 Buick Enclave Leather has a value of \$19,263.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$19,263.00 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.

49. [19-13087](#)-A-13 **IN RE: DAVID/NANCY CASTRO**
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF CONNEXUS CREDIT UNION
8-13-2019 [\[21\]](#)

DAVID CASTRO/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 a generator. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$1,000.00.

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 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 a generator has a value of \$1,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1,000.00 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.

50. [19-12788](#)-A-13 **IN RE: JOHNNY/MARY MORALES**
[MHM-2](#)

MOTION TO DISMISS CASE
8-8-2019 [\[25\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

51. [17-14292](#)-A-13 **IN RE: JUAN MEDINA- HERRERA AND STEFANIEROSE
MEDINA
[NES-5](#)**

MOTION TO MODIFY PLAN
7-31-2019 [[122](#)]

JUAN MEDINA- HERRERA/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

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

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).

M&T Bank, as agent to the creditor, Lakeview Loan Servicing LLC, its assignees and/or successors, filed an Opposition arguing that the Modified Plan does not provide for the correct arrearage amount on its claim. ECF No. 127. The debtor filed a Response proposing the correct arrearage amount of \$28,849.58 and a respective increase in plan payment be specified in the order confirming plan. The court will approve the modification of the plan with the changes that the trustee proposed.

52. [19-12993](#)-A-13 **IN RE: WILLIAM COOK**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-19-2019 [[48](#)]

Final Ruling

Matter: Order to Show Cause re Failure To Pay Filing Fees

An Order To Show Cause was issued on August 19, 2019, based on the debtor, William Jay Cook's failure to pay the filing fee installment of \$79.00 due August 14, 2019.

A review of the docket shows debtor has paid \$362.00 to date and is current in installment payments.

Therefore, the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

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 Order to Show Cause has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

53. [19-12894](#)-A-13 **IN RE: KIMBERLY KING- RICHARDSON**
[MHM-2](#)

MOTION TO DISMISS CASE
8-20-2019 [\[18\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

54. [18-12195](#)-A-13 **IN RE: JAY/BRENDA SINGLETON**
[PLG-3](#)

MOTION TO MODIFY PLAN
8-12-2019 [\[61\]](#)

JAY SINGLETON/MV
STEVEN ALPERT

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied without prejudice

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).

DISCUSSION

The Certificate of Service providing evidence of service states service was made on the US Department of Education, and upon "attached service list." ECF No. 66. However, no service list was attached.

Without evidence of proper service, the Motion is denied without prejudice.

55. [19-11395](#)-A-13 **IN RE: ORA DOUANGPHOUXAY**
[MHM-2](#)

MOTION TO DISMISS CASE
8-5-2019 [\[37\]](#)

MICHAEL MEYER/MV
GABRIEL WADDELL

No Tentative Ruling

Motion: Dismiss Case

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

Disposition: No tentative ruling

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$12,270.00.

The debtor's opposition states that the debtor has paid \$18,415.00 after the trustee filed the present motion to dismiss. ECF No. 41. The debtor also states that any remaining payments will be paid prior to the hearing on this motion.

However, it is unclear what remaining payments are left to be made prior to the date of the hearing. The Motion indicates debtor was delinquent \$12,270.00 and that another payment of \$6,135.00 would come due August 25, 2019. ECF No. 37. That amounts to \$18,405.00, which means debtor is current if debtor paid \$18,415.00.

56. [19-12897](#)-A-13 **IN RE: RAYMOND/CYNTHIA SANDERS**
[MHM-1](#)

MOTION TO DISMISS CASE
8-16-2019 [\[16\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

57. [18-13298](#)-A-13 **IN RE: CARLOS/TRINIDAD ESTRADA**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-5-2019 [\[57\]](#)

FIRST TECH FEDERAL CREDIT
UNION/MV
JEFFREY ROWE
NICHOLE GLOWIN/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Federal courts have no authority to decide moot questions.
Arizonans for Official English v. Arizona, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 4. ECF Nos. 21, 54. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract"

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

58. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
[MHM-2](#)

MOTION TO DISMISS CASE
8-15-2019 [\[22\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Conditionally denied

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) because the debtors failed to attend a scheduled § 341 meeting of creditors.

The debtor filed a Response stating debtor missed the First Meeting due to a work commitment, and that debtor will appear at the continued Meeting. ECF No. 28.

Because the debtors' failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case on condition that the debtors attend the next creditors' meeting. But if the debtors do not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

CIVIL MINUTE ORDER

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is conditionally denied. It is denied on the condition that both debtors attend the next continued §

341(a) meeting of creditors. But if both debtors do not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

59. [18-15100](#)-A-13 **IN RE: ANGELINA LOPEZ**
[RP-1](#)

CONTINUED MOTION FOR COMPENSATION FOR RANDELL PARKER,
CHAPTER 7 TRUSTEE(S)
7-23-2019 [\[41\]](#)

RANDELL PARKER/MV
NEIL SCHWARTZ

Final Ruling

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

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

Disposition: Approved

Order: Prepared by applicant

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

SEPTEMBER 4, 2019 HEARING

At the September 4, 2019, hearing on the Motion the court noted it would be inclined to grant the application, but that it is possible that the application will become moot given a pending dismissal motion and the possibility of conversion back to Chapter 7. Civil Minutes, ECF No. 60.

Since the prior hearing, the Chapter 13 trustee's Motion To Dismiss has been withdrawn. ECF No. 70.

COMPENSATION AND EXPENSES

In this Chapter 13 case, applicant Randell Parker was the former Chapter 7 trustee in this case before it was converted to a case under Chapter 13. The applicant has applied for an allowance of compensation in the amount of \$2,190.00 and reimbursement of expenses in the amount of \$85.40.

Chapter 7 trustees are entitled to compensation for their work in a case under Chapter 7 that is converted to a case under Chapter 13. *In re Hages*, 252 B.R. 789, 794-95, 797-99 (Bankr. N.D. Cal. 2000). Subject to the statutory cap of § 326(a) of the Bankruptcy Code, *id.*

at 795, "a chapter 7 trustee's compensation should be determined independently under § 330," *id.* at 798. Section 330 authorizes "reasonable compensation for actual, necessary services." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). Such amount is paid pro rata with other administrative expenses out of each distribution made by the Chapter 13 trustee. See *id.* §§ 503(b)(2), 507(a)(2), 1322(a)(2) , 1326(b)(1).

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

The court finds that the compensation and expenses sought are reasonable and within the cap of § 326(a). As a result, the court will approve the compensation and expenses 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.

Randell Parker's application for allowance of 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 to the trustee compensation in the amount of \$2,190.00 and reimbursement of expenses in the amount of \$85.40.

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 and § 1326(b)(3) of the Bankruptcy Code.

60. [19-12897](#)-A-13 **IN RE: RAYMOND/CYNTHIA SANDERS**
[WLA-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SUZANNE GOST
8-20-2019 [\[20\]](#)

SUZANNE GOST/MV
ROBERT WILLIAMS
WILLIAM ALEXANDER/ATTY. FOR MV.

No Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: No tentative ruling

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Creditor Suzanne Gost, as Trustee of the Egan and Suzanne Gost Revocable Trust established November 16, 1992 ("Creditor"), filed this Objection on August 20, 2019. Creditor's claim results from a breached lease agreement for commercial property.

Creditor opposes confirmation of the Chapter 13 plan on several grounds, including failure to provide for Creditor's claim, infeasibility, failure to provide unsecured claims at least what they would receive in a Chapter 7 liquidation, and because the plan was not proposed in good faith.

Creditor notes that the debtor stated at the 341 Meeting debtors might be receiving a substantial inheritance amounting to \$375,000.00.

The debtors filed a Response on August 29, 2019. ECF No. 29. The debtors state that the amount of Creditor's claim is unliquidated, and that an objection to claim may be filed if debtors dispute Creditor's Proof of Claim, No. 8. Debtors state amended schedules have been filed to reflect the inheritance.

Debtor also notes that the Chapter 13 trustee has requested debtors prove feasibility by obtaining declarations and pay advices from their children who will be contributing funds to make the plan payments.

At the September 4, 2019, hearing the court set a further briefing schedule. Civil Minutes, ECF No. 31. However, no responses have been filed since the prior hearing.