

**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:** WEDNESDAY  
**DATE:** SEPTEMBER 20, 2017  
**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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**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. [16-13606](#)-A-13 LUE VANG AND SAMANTHA MOTION TO MODIFY PLAN  
TCS-2 MOUA 8-3-17 [[22](#)]  
LUE VANG/MV  
TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

2. [17-12310](#)-A-13 CLARENCE SPEAR ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
DISMISSED 8-18-17 [[29](#)]

**Final Ruling**

The case dismissed, the order to show cause is discharged.

3. [17-10012](#)-A-13 MICHAEL SPRINGSTEAD CONTINUED MOTION TO CONVERT  
MHM-2 CASE FROM CHAPTER 13 TO CHAPTER  
MICHAEL MEYER/MV 7 AND/OR MOTION TO DISMISS CASE  
6-14-17 [[57](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
RESPONSIVE PLEADING

**No Ruling**

4. [17-10012](#)-A-13 MICHAEL SPRINGSTEAD  
RSW-3  
MICHAEL SPRINGSTEAD/MV  
ROBERT WILLIAMS/Atty. for dbt.

CONTINUED MOTION TO CONFIRM  
PLAN  
6-28-17 [[61](#)]

**No Ruling**

5. [17-10012](#)-A-13 MICHAEL SPRINGSTEAD  
RSW-4  
MICHAEL SPRINGSTEAD/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO SELL  
8-30-17 [[76](#)]

**No Ruling**

6. [17-12814](#)-A-13 DARIO/MARIA MENDOZA  
BDA-1  
CAPITAL ONE AUTO FINANCE/MV  
  
THOMAS GILLIS/Atty. for dbt.  
BRET ALLEN/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY CAPITAL ONE AUTO  
FINANCE  
8-17-17 [[22](#)]

**No Ruling**

7. [17-10116](#)-A-13 PAULA PARDO  
TOG-1  
PAULA PARDO/MV  
  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO VALUE  
COLLATERAL OF DITECH FINANCIAL,  
LLC  
2-24-17 [[13](#)]

**No Ruling**

8. [17-11123](#)-A-13 EDUARDO LUPIAN  
MHM-1  
MICHAEL MEYER/MV  
RABIN POURNAZARIAN/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
8-14-17 [[58](#)]

**No Ruling**

9. [15-13926](#)-A-13 LOUIE/MARTHA AGUIRRE

FREEDOM MORTGAGE  
CORPORATION/MV  
PETER BUNTING/Atty. for dbt.  
JASON KOLBE/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY MOTION FOR  
ADEQUATE PROTECTION  
8-4-17 [[31](#)]

### **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 moving party's claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or a third party. Section 2.11 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays 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.

10. [17-10427](#)-A-12 LUIS/ANGELA OLIVEIRA MOTION TO APPROVE STIPULATION  
FOR RELIEF FROM AUTOMATIC STAY  
7-24-17 [[173](#)]  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
RILEY WALTER/Atty. for dbt.

**Tentative Ruling**

**Motion:** For Approval of Stipulation for Relief from the Automatic Stay

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

**Disposition:** Granted

**Order:** Prepared by the movant

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).

Secured creditor Deutsche Bank National Trust Company (as Trustee) moves for an order approving its stipulation with the debtors for relief from the automatic stay as to real property commonly known as 1540 East Saint James Street, San Jose, CA, that has been abandoned from the estate. The court will grant the motion and approve the stipulation. The stipulation shall be attached to the order as an exhibit.

11. [16-13629](#)-A-13 JESSIE BROCKMAN MOTION TO SELL AND/OR MOTION TO  
PK-1 PAY  
JESSIE BROCKMAN/MV 8-23-17 [[25](#)]  
PATRICK KAVANAGH/Atty. for dbt.

**Tentative Ruling**

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

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

**Disposition:** Granted

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

**Property:** 25407 Judith Street, Arvin, CA

**Buyer:** Jesus J. Garcia and Laura Garcia

**Sale Price:** \$100,000 and a 6% brokerage commission (to be shared pursuant to applicable custom or contract between the seller's broker and the buyer's broker)

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

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).

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

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

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

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

12. [17-12330](#)-A-13 TIMOTHY/SHARON TEGTMEYER MOTION TO CONFIRM PLAN  
EPE-1 8-1-17 [[26](#)]  
TIMOTHY TEGTMEYER/MV  
ERIC ESCAMILLA/Atty. for dbt.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

13. [17-12530](#)-A-13 RAUL/ROSARIO COBIAN MOTION TO DISMISS CASE  
MHM-1 8-14-17 [[26](#)]  
MICHAEL MEYER/MV  
ERIC ESCAMILLA/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

14. [17-12531](#)-A-13 BOBBY REDDING MOTION TO DISMISS CASE  
MHM-1 8-14-17 [[20](#)]  
MICHAEL MEYER/MV  
HENRY NUNEZ/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

15. [17-12234](#)-A-13 CECIL/MARY OSORIO MOTION FOR EXEMPTION FROM  
MAZ-1 FINANCIAL MANAGEMENT COURSE, TO  
CECIL OSORIO/MV BE SUCCESSOR TO THE DECEASED IN  
THE BANKRUPTCY CASE, FOR WAIVER  
OF THE CERTIFICATION  
REQUIREMENTS FOR ENTRY OF  
DISCHARGE IN A CHAPTER 13 CASE  
FOR THE DECEASED CECIL J.  
OSORIO  
MARK ZIMMERMAN/Atty. for dbt. 8-10-17 [[32](#)]

**Tentative Ruling**

**Motion:** Waiver of Requirement to File § 1328 Certifications

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

**Disposition:** Granted

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

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

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c).

The debtor named in the motion has died. Rule 1016 provides that when

a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1016-1(b), the court will grant the motion. The court will authorize further administration of this case as to the deceased debtor, and waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

Furthermore, the court will substitute the surviving joint debtor in the place of the deceased debtor as the deceased debtor's representative or successor.

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. And the court finds the continued administration of the estate is possible and in the best interests of the parties. The court substitutes [surviving debtor's name] in the place of the deceased debtor as the deceased debtor's representative or successor."

16. [16-12136](#)-A-13 JEANETTE TENA  
TCS-5  
JEANETTE TENA/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
8-4-17 [[90](#)]

**No Ruling**

17. [17-12337](#)-A-13 MODESTO/CINDY GOMEZ  
SL-1  
MODESTO GOMEZ/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
7-31-17 [[28](#)]

**No Ruling**



18. [17-12539](#)-A-13 LUIS TAVARES  
MHM-1  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
8-15-17 [[27](#)]

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to October 19, 2017, at 9:00 a.m.

**Order:** Civil minute order

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this case, asserting that the debtor has failed to provide the trustee with the required or requested documentation. See 11 U.S.C. § 521(a)(3)-(4). The specific documents requested that have not been provided are listed in the declaration in support of the trustee's motion.

The trustee also moves to dismiss for "failure to set a plan for hearing with notice to creditors." But the debtor has now filed an amended plan that has been noticed for hearing on October 19, 2017, at 9:00 a.m.

The court will continue this motion to dismiss to the date of that hearing. All documents that are identified in the trustee's motion to dismiss must be provided to the trustee by the date of the October 19, 2017, hearing, or the court may dismiss this case.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to October 19, 2017, at 9:00 a.m. All documents that are identified in the trustee's motion to dismiss must be provided to the trustee by the date of the October 19, 2017, hearing, or the court may dismiss this case at the continued hearing. The trustee shall file a status report no later than 7 days before the continued hearing.

19. [17-12539](#)-A-13 LUIS TAVARES  
TOG-3  
LUIS TAVARES/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF  
BMO HARRIS BANK, NA  
8-21-17 [[36](#)]

**Final Ruling**

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

20. [17-12540](#)-A-13 EMILIO RUIZ MOTION TO DISMISS CASE  
MHM-1 8-14-17 [[16](#)]  
MICHAEL MEYER/MV  
RICHARD STURDEVANT/Atty. for dbt.

**No Ruling**

21. [12-16046](#)-A-13 ERNEST/KATHERINE SHELTON MOTION TO DISMISS CASE  
MHM-4 8-4-17 [[181](#)]  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

22. [17-11148](#)-A-13 PAUL/DARLENE HOLLAND MOTION TO CONFIRM PLAN  
WLG-3 8-4-17 [[59](#)]  
PAUL HOLLAND/MV  
NICHOLAS WAJDA/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

Debtors Paul Holland and Darlene Holland move to confirm their Chapter 13 plan. The Chapter 13 trustee opposes and requests a 75 day bar date for the debtors to achieve plan confirmation.

**DISCUSSION**

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).

One such element is feasibility. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (1st Cir. BAP 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. E.g., *In re Barnes*, 275 B.R. 889, 894 (Bankr.E.D.Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695

(Bankr.D.N.J.2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D.Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Here, the debtors have not carried their burden. Debtors' statements of incomes and expenses, e.g. Schedules I and J, lose their presumptive effect 60 days after filing. See 11 U.S.C. § 524(m)(1) (reaffirmation agreements). In this case, the debtors most recent Schedules I and J were filed five months prior the hearing on the motion. Vol. Petition, March 30, 2017, ECF # 1. And as a consequence, the court affords them no weight. The only other evidence is but a single sentence in the debtors' joint declaration in support of the motion. Debtors' Decl. ¶ 10, May 26, 2017, ECF # 38 ("We will be able to make the payments under the plan and comply with the plan"). This statement is too conclusory to sustain the debtors' burden of proof. The motion will be denied.

#### **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.

Paul Holland and Darlene Hollands' motion to confirm Chapter 13 plan has been presented to the court. Having considered the well-pleaded facts of the motion],

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's declaration without further notice or hearing. See 11 U.S.C. § 1307(c)(1).

23. [17-10749](#)-A-13 FRANK GARZOLI  
RSW-1  
FRANK GARZOLI/MV  
ROBERT WILLIAMS/Atty. for dbt.  
CONDITIONAL NON-OPPOSITION

MOTION TO SELL  
8-24-17 [[27](#)]

#### **Final Ruling**

The case dismissed, the matter is denied as moot.

24. [17-10250](#)-A-13 SHENG/CHAO VANG  
FW-1  
SHENG VANG/MV

GABRIEL WADDELL/Atty. for dbt.  
RESPONSIVE PLEADING

PRETRIAL CONFERENCE RE: MOTION  
TO VALUE COLLATERAL OF  
SPECIALIZED LOAN SERVICING LLC  
2-23-17 [[17](#)]

**Final Ruling**

The matter resolved by stipulation and order, the pretrial conference is concluded.

25. [17-12451](#)-A-13 DAVID/DELIA HAYES  
MHM-1  
MICHAEL MEYER/MV  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CASE  
8-14-17 [[14](#)]

**No Ruling**

26. [17-12453](#)-A-13 ROBERT/SALLY MALY  
MHM-1  
MICHAEL MEYER/MV  
JERRY LOWE/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
8-14-17 [[21](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

27. [14-10858](#)-A-13 DAVID/TIFFANY PIERCE  
BCS-3

BENJAMIN SHEIN/Atty. for dbt.

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF SHEIN LAW GROUP  
FOR BENJAMIN C. SHEIN, DEBTORS  
ATTORNEY(S)  
8-18-17 [[31](#)]

**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, Shein Law Group, 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 \$4165.00 and reimbursement of expenses in the amount of \$252.40. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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

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

## **CIVIL MINUTE ORDER**

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

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

Shein Law Group, PC's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the 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 \$4165.00 and reimbursement of expenses in the amount of \$252.40. The aggregate allowed amount equals \$4417.40. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4417.40 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

28. [17-12360](#)-A-13 KEITH DAVIS  
MHM-1  
MICHAEL MEYER/MV  
HENRY NUNEZ/Atty. for dbt.

MOTION TO DISMISS CASE  
8-15-17 [[20](#)]

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

**CASE DISMISSAL**

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

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

**CIVIL MINUTE ORDER**

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

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

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

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

29. [17-13263](#)-A-13 JASON/DANELLE BLACK  
DMG-1  
JASON BLACK/MV  
D. GARDNER/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
9-6-17 [[10](#)]

**No Ruling**

30. [17-12366](#)-A-13 MIGUEL HUERTA MADRIGAL MOTION TO DISMISS CASE  
MHM-1 AND OLGA NOVELA DE HUERTA 8-14-17 [[33](#)]  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

31. [16-11369](#)-A-13 FRANCISCO ROJAS MOTION TO AVOID LIEN OF CHASE  
TOG-2 MANHATTAN BANK, USA N.A./CHASE  
FRANCISCO ROJAS/MV BANK USA, N.A.  
8-3-17 [[31](#)]  
THOMAS GILLIS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt . . . ." *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. The property subject to the respondent's judgment lien is 427 R. St., Merced, CA. The only real property appearing on Schedule C is 7159 Tokay Circle, Winton, CA. Accordingly, a prima facie case has not been made for relief under § 522(f).

32. [13-15476](#)-A-13 ROBERT TYRA  
BCS-6

MOTION FOR COMPENSATION FOR  
BENJAMIN C. SHEIN, DEBTORS  
ATTORNEY(S)  
8-18-17 [[72](#)]

BENJAMIN SHEIN/Atty. for dbt.

### **Tentative 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, Shein Law Group, PC has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4582.50 and reimbursement of expenses in the amount of \$339.38. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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

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



## CIVIL MINUTE ORDER

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

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

Shein Law Group, PC's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the 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 \$4582.50 and reimbursement of expenses in the amount of \$339.38. The aggregate allowed amount equals \$4921.88. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1980.47 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid directly by the debtor after completion of the plan's term. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

33. [17-10876](#)-A-13 JOHN/MARGARET SCHRADER CONTINUED MOTION TO CONFIRM  
SL-1 PLAN  
JOHN SCHRADER/MV 7-14-17 [[31](#)]  
SCOTT LYONS/Atty. for dbt.

### Final Ruling

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

34. [17-12077](#)-A-13 STEVEN/SARAH WILLIAMS ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-29-17 [[35](#)]  
  
SCOTT LYONS/Atty. for dbt.  
\$77.00 FINAL INSTALLMENT  
PAYMENT 9/1/17

**Final Ruling**

The fee paid, the order to show cause is discharged and the case shall remain pending.

35. [15-14779](#)-A-13 VINCENT/NIOMI LAZALDE MOTION TO DISMISS CASE  
MHM-1 8-10-17 [[21](#)]  
MICHAEL MEYER/MV  
MICHAEL ARNOLD/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

36. [17-11884](#)-A-13 MONTE LAMONT CONTINUED OBJECTION TO  
APN-1 CONFIRMATION OF PLAN BY WELLS  
WELLS FARGO BANK, N.A./MV FARGO BANK, N.A.  
6-29-17 [[17](#)]  
  
ROBERT WILLIAMS/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

**Tentative Ruling**

The matter has been resolved by stipulation. The objection will be overruled as moot. And the court will confirm the plan upon submission of an appropriate order.

37. [17-12188](#)-A-13 NICOLE JIMENEZ  
BDB-2  
NICOLE JIMENEZ/MV  
BENNY BARCO/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
EXETER FINANCE LLC  
8-18-17 [[28](#)]

### **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 2012 Honda Odyssey. 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 \$9,600.

### **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 2012 Honda Odyssey has a value of \$9600. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9600 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.

38. [17-10291](#)-A-13 JUAN GONZALEZ AND MARIA CONTINUED MOTION TO CONFIRM  
TOG-2 DIAZ PLAN  
JUAN GONZALEZ/MV 7-13-17 [[70](#)]  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

39. [17-10993](#)-A-13 MARTIN/ERMILA AGUILAR  
DMG-2  
MARTIN AGUILAR/MV  
D. GARDNER/Atty. for dbt.

MOTION TO CONFIRM PLAN  
8-9-17 [[53](#)]

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

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