

**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: FRIDAY
DATE: OCTOBER 14, 2016
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

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

ORAL ARGUMENT

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [16-12101](#)-A-13 RAUL GUTIERREZ
TOG-1
RAUL GUTIERREZ/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO CONFIRM PLAN
8-13-16 [[39](#)]

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.

2. [12-17703](#)-A-13 PAUL/SUSAN ANTHONY
BCS-6

MOTION FOR COMPENSATION FOR
BENJAMIN C. SHEIN, DEBTORS
ATTORNEY(S)
8-26-16 [[128](#)]

BENJAMIN SHEIN/Atty. for dbt.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Shein Law Group, 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 \$9405.00 and reimbursement of expenses in the amount of \$255.94.

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.

Shein Law Group, 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 \$9405.00 and reimbursement of expenses in the amount of \$255.94. The aggregate allowed amount equals \$9660.94. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$9660.94 shall be allowed as an administrative expense to be paid through the plan. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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

3. [13-10004](#)-A-13 BRANDON/CASEY HOWARD MOTION TO DISMISS CASE
MHM-4 8-2-16 [[69](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [16-11905](#)-A-13 FRED/MARIA MORENO MOTION TO DISMISS CASE
MHM-1 9-2-16 [[31](#)]
MICHAEL MEYER/MV
JAMES MILLER/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

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 \$5493.90.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

5. [13-14006](#)-A-13 DENNIS NAJARIAN
MHM-3
MICHAEL MEYER/MV
THOMAS ARMSTRONG/Atty. for dbt.

MOTION TO DISMISS CASE
9-6-16 [[76](#)]

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).

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 \$5238.18.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

6. [11-19211](#)-A-13 CHERYL AIVAZIAN
MHM-2
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-7-16 [[65](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [15-14711](#)-A-13 ANDREA SOUSA CONTINUED MOTION TO DISMISS
MHM-3 CASE
MICHAEL MEYER/MV 8-10-16 [[78](#)]
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

8. [16-12611](#)-A-13 NATALIE ROBERTS ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-22-16 [[28](#)]
DAVID JENKINS/Atty. for dbt.
DISMISSED

Final Ruling

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

9. [16-12611](#)-A-13 NATALIE ROBERTS MOTION TO DISMISS CASE
MHM-1 9-16-16 [[24](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
DISMISSED

Final Ruling

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

10. [11-16113](#)-A-13 CANDELARIO/TERESA PEREZ OBJECTION TO CLAIM OF
MHM-1 CITIFINANCIAL SERVICES, INC.,
MICHAEL MEYER/MV CLAIM NUMBER 8
8-31-16 [[61](#)]
M. ENMARK/Atty. for dbt.

Final Ruling

Objection: Objection to Claim No. 8

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

Disposition: Sustained

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

LEGAL STANDARDS

Deemed Allowance under § 502(a)

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). If properly executed and filed under the rules along with all supporting documentation that may be required, see, e.g., Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. See Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

State Law on Waiver

With limited exceptions, § 502(b)(1) of the Bankruptcy Code means that "any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy." *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

Under California state law, waiver can be asserted as a defense to a claim. "California courts will find waiver when a party intentionally relinquishes a right, or when that party's acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." *Intel Corp. v. Hartford Acc. & Indem. Co.*, 952 F.2d 1551, 1559 (9th Cir. 1991) (citation omitted).

DISCUSSION

The respondent and claimant Citifinacial Services has communicated to the trustee in writing that it does not wish to be paid on this claim. But until an objection to the claim is brought, the claim remains allowed. And the trustee must continue to pay all allowed claims consistent with the plan. § 502(a).

By its return of funds and/or written statements, the claimant has waived its right to receipt of any further amounts on its claim. These acts are highly inconsistent with an intent to enforce the right to any unpaid balance of the claim. This also creates an impossibility for the trustee to pay the allowed claim consistent with the trustee's duties.

Given the claimant's waiver of its right to receive any remaining balance of its claim, the court will liquidate the amount of the claim at the amount paid by the trustee to the claimant.

The claim will be allowed as an unsecured claim in the amount of \$0.00. The remaining balance of the claim will be disallowed.

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to claim has been presented to the

court. Having entered the default of the respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection to Claim No. 8 is sustained. The court liquidates the amount of the claim at the amount paid by the trustee on the claim. The claim will be allowed as an unsecured claim in the amount of \$0.00. The remaining balance of the claim will be disallowed.

11. [16-13015](#)-A-13 BARBARA LOPEZ POSADA ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-22-16 [[17](#)]

SCOTT LYONS/Atty. for dbt.

Final Ruling

The installment payment made, the order to show cause is discharged and the case will remain pending.

12. [14-13016](#)-A-13 ANTHONY/VIRGINIA GONZALES MOTION TO DISMISS CASE
MHM-3 8-3-16 [[53](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

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 \$2554.87.

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.

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

Final Ruling

Order: Civil minute order

VALUATION OF COLLATERAL

In this case, the debtor seeks to value collateral consisting of personal property described as follows: a cocktail table, table cover, vinyl top and base, 2 side chairs, 2 inch up bench, rectangular extension table, 2 arm chairs, 6 side chairs, dining table, 2 love seats and sofa. 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 \$2500.

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 is described as follows: : a cocktail table, table cover, vinyl top and base, 2 side chairs, 2 inch up bench, rectangular extension table, 2 arm chairs, 6 side chairs, dining table, 2 love seats and sofa (collectively, "furniture"). This furniture has a value of \$2500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2500 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.

14. [11-19519](#)-A-13 DANIEL/SHAUNCI CERROS MOTION TO DISMISS CASE
MHM-1 9-7-16 [[76](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [14-11820](#)-A-13 TONY/CARMEN BAIZA MOTION TO DISMISS CASE
MHM-2 9-6-16 [[71](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [15-10420](#)-A-13 SYLVIA ARELLANO
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
8-8-16 [[55](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [16-11222](#)-A-13 STEVE LLOYD
MHM-2
MICHAEL MEYER/MV
JAMES MILLER/Atty. for dbt.

MOTION TO DISMISS CASE
9-2-16 [[32](#)]

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).

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 \$4106.94.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

18. [13-13923](#)-A-13 LILLY JIMENEZ
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
OPPOSITION

MOTION TO DISMISS CASE
9-6-16 [[24](#)]

Final Ruling

The hearing on the chapter 13 trustee's motion to dismiss is continued to November 17, 2016, at 9:00 a.m. to coincide with the hearing on the debtor's motion to confirm a modified chapter 13 plan.

19. [16-11025](#)-A-13 TIM/CHERIE WILKINS
APN-1
BMW BANK OF NORTH AMERICA/MV
PETER FEAR/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-8-16 [[123](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2014 BMW X5

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).

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as 6 post-petition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Additionally, the debtors have not opposed the relief sought. Cause exists to grant relief under § 362(d)(1).

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.

BMW Bank of North America'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 a 2014 BMW X5, 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 pursue its rights against the property pursuant to applicable non-bankruptcy law.

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.

20. [16-11025](#)-A-13 TIM/CHERIE WILKINS CONTINUED MOTION TO CONFIRM
FW-1 PLAN
TIM WILKINS/MV 7-5-16 [[67](#)]
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING, PLAN
WITHDRAWN

Final Ruling

The plan withdrawn, the matter is dropped as moot.

21. [16-12325](#)-A-13 RAUL AUDIFFRED AND ESTELA MOTION TO VALUE COLLATERAL OF
TOG-1 GONZALEZ TULARE COUNTY FEDERAL CREDIT
RAUL AUDIFFRED/MV UNION
8-26-16 [[17](#)]
THOMAS GILLIS/Atty. for dbt.

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 2008 Nissan Altima. 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 \$6658.

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 2008 Nissan Altima has a value of \$6658. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6658 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.

22. [16-12630](#)-A-13 ROGELIO/BETTY TRUJILLO
JRL-1
ROGELIO TRUJILLO/MV
JERRY LOWE/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
AMERICAN HONDA FINANCE
9-8-16 [[14](#)]

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 2013 Honda Accord LX. 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 \$13,000.

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 2013 Honda Accord LX has a value of \$13,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$13,000 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.

23. [16-12630](#)-A-13 ROGELIO/BETTY TRUJILLO MOTION TO VALUE COLLATERAL OF
JRL-2 HYUNDAI CAPITAL AMERICA
ROGELIO TRUJILLO/MV 9-8-16 [[18](#)]
JERRY LOWE/Atty. for dbt.

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 2013 Hyundai Elantra GLS Sedan. 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 \$11,500.

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 2013 Hyundai Elantra GLS Sedan has a value of \$11,500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$11,500 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.

24. [16-12630](#)-A-13 ROGELIO/BETTY TRUJILLO MOTION TO VALUE COLLATERAL OF
JRL-3 MOR FURNITURE FOR LESS, INC.
ROGELIO TRUJILLO/MV 9-8-16 [\[22\]](#)
JERRY LOWE/Atty. for dbt.

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 follows: (1) California king-size headboard and footboard, (2) dining table and chairs, and (3) sofa, love seat, and 5-foot by 8-foot rug. 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 \$300.

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 is described as follows: (1) California king-size headboard and footboard, (2) dining table and chairs, and (3) sofa, love seat, and 5-foot by 8-foot rug. This collateral collectively has a value of \$300. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$300 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.

25. [12-12332](#)-A-13 JOSE LOZANO
MHM-2
MICHAEL MEYER/MV

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
9-14-16 [[173](#)]

THOMAS GILLIS/Atty. for dbt.
NON-OPPOSITION

Tentative Ruling

Motion: Determination of Final Cure and Payment of Required
Postpetition Amounts under Rule 3002.1(h)

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

Disposition: Granted

Order: Prepared by moving party

PROCEDURES

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b) (5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response under subdivision (g)." Fed. R. Bankr. P. 3002.1(f). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not timely file it. *Id.*

The holder of the claim then has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to agree or dispute whether the debtor has paid in full the amount required to cure the default on the claim and whether the debtor is otherwise current on all payments under § 1322(b) (5).

A motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h). If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bank. P. 3002.1(i).

DISCUSSION

The trustee has moved for a determination that the debtor has cured the default on his loan with The Bank of New York Mellon, which loan is serviced by Select Portfolio Servicing, Inc. and that the debtor is current on his mortgage payments to the same creditor on the same loan through July 2016. The debtors have filed a nonopposition, and this creditor has filed an opposition.

The Bank of New York Mellon's claim was classified as a Class 1 claim in the confirmed plan.

The trustee offers evidence that the debtor made his final plan payment on July 29, 2016. The debtor has completed payments under the plan, and because the creditor does not dispute this fact, it is established.

The trustee filed a Notice of Final Cure (NFC) on August 4, 2016. The Bank of New York Mellon filed its response to the NFC. It alleged an unpaid balance on the prepetition arrearage claim in the amount of \$1126.22 and a postpetition arrearage claim in the amount of \$3593.61.

However, in opposition to the motion, the creditor has modified its position. First, the creditor now admits that the prepetition arrearage has been cured. Therefore, the court will find that the prepetition arrearage has been cured.

Second, the creditor has indicated that it disputes whether the debtor is current on post-petition arrears. The trustee cannot determine how the creditor has determined the balance of the pre-petition arrears. The trustee's attorney has testified that the trustee has paid all mortgage payments, pursuant to the plan and the multiple Notices of Mortgage Change filed from April 2012 through July 2016.

But the creditor's declaration in opposition reveals its dispute is misplaced. The trustee seeks a determination as to the postpetition payments that the debtor is current *through July 2016*. The trustee's evidence shows that all mortgage payments were made pursuant to the plan and Notices of Mortgage Change *from April 2012 through July 2016*. The creditor, however, argues that the loan is now due for August 1, 2016 in the amount of \$1592.56, which includes the August 1, 2016 and September 1, 2016 payments and \$274.72 "currently in suspense."

The court construes the creditor's opposition as disputing whether its mortgage loan is current for payments due *after* July 2016. Whether the loan is due for time periods following July 2016 is outside the scope of the motion's determination. Therefore, there is no dispute as to whether the creditor's loan is current through July 2016, the end date for the determination sought by the trustee.

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion.

26. [13-16633](#)-A-13 FERNANDO ARROYO AND MOTION TO DISMISS CASE
MHM-3 ELIZABETH BROERS 8-3-16 [[63](#)]
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [16-12136](#)-A-13 JEANETTE TENA CONTINUED OBJECTION TO
APN-1 CONFIRMATION OF PLAN BY FORD
FORD MOTOR CREDIT COMPANY/MV MOTOR CREDIT COMPANY
8-1-16 [[26](#)]
TIMOTHY SPRINGER/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
OBJECTION WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

28. [16-12437](#)-A-13 GURMIT SANDHU AND KARMIT MOTION FOR RELIEF FROM
JWC-1 BRAR AUTOMATIC STAY
TRANSPORT FUNDING, LLC./MV 9-26-16 [[35](#)]
GLEN GATES/Atty. for dbt.
JENNIFER CRASTZ/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The case having been dismissed, the motion is denied as moot. 11
U.S.C §§ 349(b) (3), 362(c) (1), (2) (B).

29. [16-12437](#)-A-13 GURMIT SANDHU AND KARMIT MOTION TO DISMISS CASE
MHM-1 BRAR 8-26-16 [[22](#)]
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f) (1) (B). None has been

filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

Failure to Provide Documents

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).

Delinquency under Proposed Plan

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2460.

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 a delinquency in payments under the proposed chapter 13 plan. The court hereby dismisses this case.

30. [15-10639](#)-A-13 RACHEL RIVERA
TCS-6
RACHEL RIVERA/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN
8-22-16 [[104](#)]

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.

31. [16-10239](#)-A-13 LUPE GONZALEZ MOTION TO DISMISS CASE
MHM-3 9-2-16 [[41](#)]
MICHAEL MEYER/MV
VARDUHI PETROSYAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

32. [14-12540](#)-A-13 ESTHER PALACIOS MOTION TO DISMISS CASE
MHM-4 9-6-16 [[66](#)]
MICHAEL MEYER/MV
F. GIST/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

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 \$1514.16.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

33. [15-10240](#)-A-13 JOHN/ROBERTA CARTER
MHM-3
MICHAEL MEYER/MV
CHRISTIAN YOUNGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
8-5-16 [[63](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

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 \$90,891.80.

By not disputing the delinquency, the debtors' opposition concedes the debtor was delinquent when the motion to dismiss was filed in the amount asserted by the trustee.

The debtors indicate prospective intent to file a motion to modify the plan by the hearing date, which presumably will address the delinquency under the plan. But the modified plan has not yet appeared on the docket. The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to resolve the delinquency with a modified plan is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

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 considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this

case. Payments are delinquent under the confirmed plan. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

34. [16-11540](#)-A-13 WILLIAM/CRYSTAL DRAKE MOTION TO DISMISS CASE
MHM-2 9-2-16 [[24](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

35. [16-12840](#)-A-13 ALVINO GARCIA OBJECTION TO CONFIRMATION OF
PPR-1 PLAN BY USAA FEDERAL SAVINGS
USAA FEDERAL SAVINGS BANK/MV BANK
8-26-16 [[13](#)]
TIMOTHY SPRINGER/Atty. for dbt.
DIANA TORRES-BRITO/Atty. for mv.

No tentative ruling.

36. [13-13841](#)-A-13 BRAD/TERESA BOULDEN MOTION TO DISMISS CASE
MHM-2 8-2-16 [[79](#)]
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

37. [14-14444](#)-A-13 IAN/JENNIFER STRACHAN MOTION TO DISMISS CASE
MHM-2 8-3-16 [[51](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

38. [15-13644](#)-A-13 ELIZABETH LEGASPI MOTION TO DISMISS CASE
MHM-1 9-6-16 [[27](#)]
MICHAEL MEYER/MV
VARDUHI PETROSYAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [15-14544](#)-A-13 LINDI ELLIS MOTION TO DISMISS CASE
MHM-1 9-6-16 [[30](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

40. [16-11645](#)-A-13 ARNOLD WILLIAMS OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
9-16-16 [[28](#)]
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

41. [12-16046](#)-A-13 ERNEST/KATHERINE SHELTON MOTION TO MODIFY PLAN
TCS-8 8-22-16 [[156](#)]
ERNEST SHELTON/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.

42. [16-10847](#)-A-13 STANLEY/LINDA MORGAN MOTION TO VALUE COLLATERAL OF
PK-3 SYNCHRONY BANK
STANLEY MORGAN/MV 9-14-16 [[47](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not addressed to an officer of the responding party under Rule 7004(h). No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

43. [16-12147](#)-A-13 ANTONIO/MARIA NAVARRO MOTION TO CONFIRM PLAN
MGG-5 8-31-16 [[64](#)]
ANTONIO NAVARRO/MV
MATTHEW GRECH/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.

44. [14-12649](#)-A-13 DANIEL/MOLLY LAVILLA MOTION TO DISMISS CASE
MHM-2 8-3-16 [[60](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

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 \$580.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

45. [14-15749](#)-A-13 NATHAN RODRIGUEZ CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 7-12-16 [[55](#)]
ERIC ESCAMILLA/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

46. [12-12650](#)-A-13 ROBERT/MONICA OLIVEIRA MOTION TO MODIFY PLAN
GMA-1 8-26-16 [[69](#)]
ROBERT OLIVEIRA/MV
GEOFFREY ADALIAN/Atty. for dbt.

Final Ruling

Motion: Modification of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rules of Bankruptcy Procedure 3015(g). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

47. [12-12650](#)-A-13 ROBERT/MONICA OLIVEIRA CONTINUED MOTION TO DISMISS
MHM-4 CASE
ROBERT OLIVEIRA/MV 7-15-16 [[61](#)]
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

48. [13-18050](#)-A-13 JOEY/TERESE SAN NICOLAS MOTION TO DISMISS CASE
MHM-2 8-3-16 [[32](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

49. [13-13051](#)-A-13 RALPH/REBECCA SALDANA MOTION TO MODIFY PLAN
BCS-5 8-19-16 [[66](#)]
RALPH SALDANA/MV
BENJAMIN SHEIN/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.

50. [16-10253](#)-A-13 JOE PEREZ MOTION TO COMPROMISE
PK-3 CONTROVERSY/APPROVE SETTLEMENT
JOE PEREZ/MV AGREEMENT WITH BIG PINE SCHOOL
DISTRICT
9-16-16 [[157](#)]
PATRICK KAVANAGH/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

51. [14-10855](#)-A-13 ELISEO OROZCO
MHM-4
MICHAEL MEYER/MV
JEFFREY ROWE/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-6-16 [[93](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

52. [15-11055](#)-A-13 CHERYL JACQUEZ
MHM-3
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

MOTION TO DISMISS CASE
8-8-16 [[123](#)]

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).

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 \$2369.46.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

53. [16-11955](#)-A-13 REYNALDO ARCINO
SL-1
REYNALDO ARCINO/MV
SCOTT LYONS/Atty. for dbt.
OPPOSITION

MOTION TO CONFIRM PLAN
8-23-16 [[39](#)]

No tentative ruling.

54. [15-14356](#)-A-13 ARMANDO MARTINEZ
TLC-3
ARMANDO MARTINEZ/MV
JESSICA DORN/Atty. for dbt.

MOTION TO AVOID LIEN OF
DISCOVER BANK
9-13-16 [[60](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

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).

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).

55. [16-10356](#)-A-13 KENNETH/AMANDA WOOD MOTION TO MODIFY PLAN
PBB-2 8-24-16 [[43](#)]
KENNETH WOOD/MV
PETER BUNTING/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.

56. [15-12157](#)-A-13 ALFONSO JURADO GONZALES MOTION TO DISMISS CASE
MHM-4 8-8-16 [[54](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

57. [14-12359](#)-A-13 ANDRES/BILLIE SALAZAR MOTION TO MODIFY PLAN
TCS-2 8-22-16 [[45](#)]
ANDRES SALAZAR/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.

58. [15-13960](#)-A-13 JAMES BARR
PBB-2
JAMES BARR/MV
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN
8-24-16 [[62](#)]

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.

59. [13-15961](#)-A-13 ROBERT/HOLLY WOODS
MHM-3
MICHAEL MEYER/MV
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO DISMISS CASE
9-6-16 [[98](#)]

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).

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 \$4409.35.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

60. [11-17662](#)-A-13 FABIAN/JAN SANCHEZ
MHM-4
MICHAEL MEYER/MV
JOSEPH ARNOLD/Atty. for dbt.
WITHDRAWN

CONTINUED MOTION TO DISMISS
CASE
7-15-16 [[119](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

61. [15-10170](#)-A-13 STEPHEN/KRISTI TOLBERT CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 7-13-16 [[23](#)]
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

62. [16-10770](#)-A-13 ANITA VALDEZ OBJECTION TO CONFIRMATION OF
PLAN BY CALIBER HOME LOANS,
CALIBER HOME LOANS, INC./MV INC.
9-21-16 [[48](#)]
MARK ZIMMERMAN/Atty. for dbt.
CHRISTINA O/Atty. for mv.

No tentative ruling.

63. [11-62072](#)-A-13 FRANK/PATRICIA PADILLA MOTION FOR COMPENSATION BY THE
FW-4 LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
8-23-16 [[68](#)]
PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Waddell, 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 \$3713.00 and reimbursement of expenses in the amount of \$117.50. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$3713.00 and reimbursement of expenses in the amount of \$117.50. The aggregate allowed amount equals \$3830.50, and this amount is in addition to the amount of \$2077.69, which was allowed on an interim basis. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3830.50 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held. 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.

64. [16-12672](#)-A-13 KENNETH BELVAIL

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-28-16 [[37](#)]

Tentative Ruling

If the installment payment of \$77 due September 23, 2016, has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

65. [16-12672](#)-A-13 KENNETH BELVAIL
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
9-22-16 [[33](#)]

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

The debtors have failed to provide credit counseling certificates. With exceptions not applicable here, an individual cannot be a debtor under Title 11 unless such individual has received credit counseling as prescribed by § 109(h)(1). Credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

Additionally, the debtor has not provided the trustee with required documentation that the trustee requested. § 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 cause based on failure to file credit counseling certificates, and for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

66. [16-12672](#)-A-13 KENNETH BELVAIL
PPR-1
WILMINGTON TRUST, NATIONAL
ASSOCIATION/MV

ASYA LANDA/Atty. for mv.

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY
WILMINGTON TRUST, NATIONAL
ASSOCIATION
9-20-16 [[28](#)]

No tentative ruling.

67. [13-16575](#)-A-13 SARAH GATHRIGHT
MHM-4
MICHAEL MEYER/MV
F. GIST/Atty. for dbt.
DISMISSED

MOTION TO DISMISS CASE
9-6-16 [[74](#)]

Final Ruling

The case dismissed, the matter is dropped as moot.

68. [16-11475](#)-A-13 DAVID ALANIS
MHM-1
MICHAEL MEYER/MV
CHRISTOPHER FISHER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
9-7-16 [[55](#)]

No tentative ruling.

69. [16-10478](#)-A-13 VICTOR ISLAS AND LORENA
MHM-2 GONZALEZ
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-2-16 [[33](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

70. [11-14481](#)-A-13 PRIMITIVO/ALMA CRUZ
MHM-2
MICHAEL MEYER/MV

OBJECTION TO CLAIM OF WELLS
FARGO BANK, N.A., CLAIM NUMBER
7
8-9-16 [[88](#)]

THOMAS ARMSTRONG/Atty. for dbt.

Final Ruling

Objection: Objection to Claim No. 7

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

Disposition: Sustained

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

LEGAL STANDARDS

Deemed Allowance under § 502(a)

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). If properly executed and filed under the rules along with all supporting documentation that may be required, *see, e.g.,* Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. *See* Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

State Law on Waiver

With limited exceptions, § 502(b)(1) of the Bankruptcy Code means that "any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy." *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

Under California state law, waiver can be asserted as a defense to a claim. "California courts will find waiver when a party intentionally relinquishes a right, or when that party's acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." *Intel Corp. v. Hartford Acc. & Indem. Co.*, 952 F.2d 1551, 1559 (9th Cir. 1991) (citation omitted).

DISCUSSION

The respondent and claimant Wells Fargo Bank, N.A., has returned funds received from the trustee and/or has communicated to the trustee in writing that "the loan is paid in full and the account has been closed." But until an objection to the claim is brought, the claim remains allowed. And the trustee must continue to pay all allowed claims consistent with the plan. § 502(a).

By its return of funds and/or written statements, the claimant has waived its right to receipt of any further amounts on its claim. These acts are highly inconsistent with an intent to enforce the right to any unpaid balance of the claim. This also creates an impossibility for the trustee to pay the allowed claim consistent with the trustee's duties.

Given the claimant's waiver of its right to receive any remaining balance of its claim, the court will liquidate the amount of the claim at the amount paid by the trustee to the claimant.

The claim will be allowed as an unsecured claim in the amount of \$1825.02. The remaining balance of the claim will be disallowed.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection to Claim No. 7 filed by Wells Fargo Bank, N.A. is sustained. The court liquidates the amount of the claim at the amount paid by the trustee on the claim. The claim will be allowed as an unsecured claim in the amount of \$1825.02. The remaining balance of the claim will be disallowed.

71. [11-18982](#)-A-13 DAVID/CATHY BARCO
MHM-2
MICHAEL MEYER/MV
BENNY BARCO/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-7-16 [[74](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

72. [13-17682](#)-A-13 EUGENE/MARILYN MORA
MHM-3
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-6-16 [[59](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

73. [16-12587](#)-A-13 CRETIA GUZMAN
MHM-1
MICHAEL MEYER/MV
STEPHEN LABIAK/Atty. for dbt.
WITHDRAWN
MOTION TO DISMISS CASE
8-26-16 [[16](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

74. [16-10789](#)-A-13 PAUL/MARIA WILLIAMS
JRL-4
PAUL WILLIAMS/MV
JERRY LOWE/Atty. for dbt.
OPPOSITION
MOTION TO CONFIRM PLAN
8-16-16 [[57](#)]

No tentative ruling.

75. [16-12192](#)-A-13 ROBIN BLAKE
JERRY LOWE/Atty. for dbt.
INSTALLMENT FEE PAID \$77.00
ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-23-16 [[43](#)]

Final Ruling

The installment paid, the order to show cause is discharged and the case will remain pending.

76. [16-12192](#)-A-13 ROBIN BLAKE
JRL-1
ROBIN BLAKE/MV
JERRY LOWE/Atty. for dbt.
MOTION TO CONFIRM PLAN
8-15-16 [[29](#)]

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.

77. [16-12192](#)-A-13 ROBIN BLAKE CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 7-29-16 [[19](#)]
JERRY LOWE/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

78. [14-15493](#)-A-13 DANIEL/LYDIA WILLIAMS MOTION TO DISMISS CASE
MHM-3 8-5-16 [[55](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

79. [15-13096](#)-A-13 CRYSTAL MONROY CERVANTES CONTINUED MOTION TO DISMISS
MHM-3 CASE
MICHAEL MEYER/MV 8-10-16 [[79](#)]
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

80. [16-10697](#)-A-13 DARCY NUNES
TCS-1
DARCY NUNES/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN
9-1-16 [[20](#)]

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

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

81. [13-12498](#)-A-13 HILDA CARDOSO
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
8-2-16 [[33](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

82. [15-12498](#)-A-13 JULIE ROSALES
MHM-1
MICHAEL MEYER/MV
GEORGE LOGAN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
9-6-16 [[23](#)]

No tentative ruling.

83. [16-10698](#)-A-13 MATTHEW/DEBORAH EVANS CONTINUED MOTION TO CONFIRM
TCS-1 PLAN
MATTHEW EVANS/MV 7-14-16 [[25](#)]
TIMOTHY SPRINGER/Atty. for dbt.
OPPOSITION

No tentative ruling.

84. [16-10434](#)-A-13 JOSE ANGULO RESCHEDULED HEARING RE: ORDER
FEC-1 TO APPEAR RE: VOLUNTARY
PETITION
9-29-16 [[66](#)]
SCOTT LYONS/Atty. for dbt.
ORDER #67

No tentative ruling.

85. [16-10847](#)-A-13 STANLEY/LINDA MORGAN CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 9-7-16 [[40](#)]
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

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

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 7 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will 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 this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.