

**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: THURSDAY

DATE: OCTOBER 17, 2019

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

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

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

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

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

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

1. [19-13002](#)-A-13 **IN RE: ARNOLDO CASTRO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-19-2019 [[24](#)]

THOMAS GILLIS
\$77.00 INSTALLMENT PAYMENT ON 9/20/19

Final Ruling

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

2. [19-13002](#)-A-13 **IN RE: ARNOLDO CASTRO**
 [MHM-1](#)

MOTION TO DISMISS CASE
9-16-2019 [[18](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

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

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-11-2019 [[48](#)]

MARK ZIMMERMAN
DISMISSED 9/20/19

Final Ruling

The case having been dismissed, the order to show cause is discharged as moot.

4. [19-11706](#)-A-13 **IN RE: LUIS/ROSALINDA MARTINEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
9-12-2019 [[35](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

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 \$4,400.00.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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. [19-12308](#)-A-13 **IN RE: ELI/ELENITA MALICSI**

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS
ATTORNEY(S)
9-12-2019 [[23](#)]

STEPHEN LABIAK

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, Stephen L. Labiak has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$6,115.00 and reimbursement of expenses in the amount of \$82.00.

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

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

CIVIL MINUTE ORDER

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

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

Stephen L. Labiak'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 \$6,115.00 and reimbursement of expenses in the amount of \$82.00. The aggregate allowed amount equals \$6,197.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$6,197.00 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

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

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

6. [19-12308](#)-A-13 **IN RE: ELI/ELENITA MALICSI**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-13-2019 [[31](#)]

SELECT PORTFOLIO SERVICING,
INC./MV
STEPHEN LABIAK
NANCY LEE/ATTY. FOR MV.
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

7. [19-12710](#)-A-13 **IN RE: EDITH FIGUEROA**
[MHM-2](#)

MOTION TO DISMISS CASE
9-16-2019 [\[18\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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 \$2,026.00.

The debtor's opposition states that the debtor will be current prior to the hearing on this motion (ECF #30). In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$2,026.00.

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 pay the delinquency on or before a future date 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 in the amount of \$2,026.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

8. [18-10711](#)-A-13 **IN RE: WARREN LOZANO AND TINA BROWN**
[SL-1](#)

MOTION TO INCUR DEBT
9-20-2019 [[30](#)]

WARREN LOZANO/MV
SCOTT LYONS

Tentative Ruling

Motion: Approve New Debt [Vehicle Loan]

Notice: LBR 9014-1(f)(2); no 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). 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 debtor seeks to incur new debt to finance the purchase of a vehicle. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

9. [14-13418](#)-A-13 **IN RE: ROBERT/LUCERO BISHOP**
[MHM-6](#)

MOTION TO DISMISS CASE
9-10-2019 [[119](#)]

MICHAEL MEYER/MV
SUSAN HEMB
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

10. [19-13421](#)-A-13 **IN RE: JOSE ANGULO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-23-2019 [[13](#)]

SCOTT LYONS

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

The debtor bears the burden of proof on confirmation of the Chapter 13 plan. *In re Arnold and Baker Farms*, 177 B.R.648, 654 (9th Cir. BAP 1994). Section 1325(a) requires that the debtor fully comply with applicable provisions of title 11 and also requires that the debtor proceed in good faith. 11 U.S.C. § 1325(a)(1),(3),(7). 521(a)(1)(B)(i) requires a full, complete and candid disclosure of assets. Here, the debtor has not scheduled his interest in a 1999 Chevrolet C1500 pickup. As a result, the debtor has not sustained his burden of proof on confirmation. The objection will be sustained.

CIVIL MINUTE ORDER

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

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

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

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

11. [18-11926](#)-A-13 **IN RE: STEVEN/TELVA RAMIREZ**
[SL-3](#)

MOTION TO EMPLOY VONN CHRISTENSON AS SPECIAL COUNSEL AND/OR
MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SEQUOIA BEVERAGE CO.
9-10-2019 [\[55\]](#)

STEVEN RAMIREZ/MV
SCOTT LYONS

Tentative Ruling

Motion: Employ Special Counsel, Approve Settlement and Pay Special Counsel

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

Disposition: Denied in part, continued in part to November 12, 2019

Order: Civil minute order

Debtors Steven Ramirez and Telva Ramirez ("Ramirezes") move to (1) employ Vonn Christenson as special counsel for the prosecution of a personal injury action; (2) approve a \$5,000 settlement with Sequoia Beverage Company; and (3) pay special counsel fees of \$1,750.00 and reimburse special counsel costs of \$1,771.96.

FACTS

Ramirezes filed chapter 13 bankruptcy. Among the assets the Ramirezes held at the time of filing was a personal injury cause of action against Sequoia Beverage Company. They did not exempt that claim.

Later the Ramirezes proposed and confirmed a plan to repay their creditors. Plan, June 20, 2018, ECF # 38. Under the terms of the plan, unsecured creditor claims would be paid in full. The confirmation order provided that (1) the claim is property of the estate; and (2) the debtors will (A) pursue the claim against Sequoia Beverage Company; (B) seek and receive approval of any proposed settlement under Rule 9019; and (C) turn over non-exempt settlement amounts to the trustee within 10 days of receipt. Order, August 6, 2018, ECF # 50.

Having settled the claim, the debtors seek this court's approval.

DISCUSSION

Employment of Counsel

Chapter 13 debtors need not seek court approval to retain special counsel. 11 U.S.C. § 327; *In re Scott*, 531 B.R. 640, 645-46 (Bankr. N.D. Miss. 2015) (workers compensation special counsel); March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Employment and Compensation of Professionals, Employment of Professionals § 4:6 (The Rutter Group December 2018). Consequently, the debtors' motion to employ Vonn Christenson will be denied.

Approval of the Settlement

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The court has reviewed and considered the declaration of Telva Ramirez. Ramirez decl., September 10, 2019, ECF # 58. Having done so the court does not believe that it sufficiently addresses the factors described in *A & C Props.*

The court will continue the hearing on this aspect of the motion to allow the debtor to augment the record.

Payment of Counsel

While 13 debtors need not seek court approval to retain counsel in chapter 13, the court retains authority to review and approve fees for Chapter 13 counsel. 11 U.S.C. § 330; *In re Scott*, 531 B.R. 640, 645-46 (Bankr. N.D. Miss. 2015).

Here, the proposed settlement is \$5,000. Special counsel prays costs of \$1,771.96 and fees of \$1,750. Together these absorb approximately 70 percent of the gross settlement. The record is unsupported as to (1) itemized costs; (2) the method by which fees are calculated; or (3) the reasonableness of the fees. The court will continue the hearing on this aspect of the motion to allow the debtor to augment the record.

Provision Potentially Contrary to Terms of Plan

Chapter 13 plans bind. 11 U.S.C. § 1327(a); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2009).

Here, the settlement provides that the plaintiff "shall be responsible for any and all liens." Settlement ¶ 4, September 10, 2019, ECF # 57. The court presumes these liens arose pre-petition, but is uncertain about this fact. Moreover, the plan lists no such liens. Plan §§ 3.7-3.10, June 20, 2018, ECF # 38. To the extent that the settlement provides for direct payment of liens by the debtors and/or special counsel from his trust account (or otherwise), the settlement is contrary to the terms of the plan,

which provides for payment of pre-petition debts by the Chapter 13 trustee and will not be approved.

CIVIL MINUTE ORDER

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

Steven Ramirez and Telva Ramirezes' motion has been presented to the court. Having considered the motion, together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied (1) as to the request to employ Vonn Christenson as special counsel; and (2) to the extent that the motion seeks leave for the debtors and/or Vonn Christenson to pay lienholders directly, rather than through the office of the Chapter 13 trustee;

IT IS FURTHER ORDERED that the hearing on this motion is continued to November 12, 2019, at 3:00 p.m.;

IT IS FURTHER ORDERED that not later than October 29, 2019, the movants may augment the record with respect to (1) whether the settlement satisfies the *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982); (2) whether the costs sought by special counsel are "actual, necessary" expenses, 11 U.S.C. § 330(a)(1)(B); and (3) whether the fee sought, \$1,750.00, is "reasonable," within the meaning of 11 U.S.C. § 330(a)(1)(A);

IT IS FURTHER ORDERED that not later than November 5, 2019, the Chapter 13 trustee and any creditor may submit a statement of position on the issues raised herein; and

IT IS FURTHER ORDERED that all other requested relief, if any, is denied.

12. [19-13326](#)-A-13 **IN RE: RICARDO/JESSICA MONTANO**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
9-3-2019 [\[23\]](#)

CAPITAL ONE AUTO FINANCE/MV
PETER BUNTING
CHERYL SKIGIN/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

OBJECTION TO CONFIRMATION OF PLAN

The debtor owns a 2014 Toyota Camry, which it contends is worth
\$9,881.00. (ECF #1). Interest on the contract is 12.99%. Creditor
Capitol One Auto Finance holds a security interest in that
vehicle. The debtor has proposed a plan that classifies this as a
Class 2(A) claim, providing for \$6,000.00 at 5.00% interest over 60
months. Class 2(A) does not modify claims Plan §3.08, August 2,
2019, ECF # 2. Creditor has filed a Proof of Claim No. 3 that the
amount due is \$9,361.94. No motion to value the car has been filed
or granted and no objection to the Proof of Claim.

Amount of Secured Claim and Feasibility

In a Chapter 13 proceedings, a Debtor may confirm a Plan over a
creditor's objection only if the Plan provides the creditor the full
value, as of the effective date of the Plan, of the allowed amount
of the secured claim. 11 U.S.C. § 1325(a)(5)(B). Here, the amount
of the secured claim is \$9,361.94, but the plan only provides for
\$6,000.00. While it is true that the Proof of Claim controls the
amount of the claim, Plan § 3.02, a Proof of Claim that is more than
50% larger than that schedules raises issues concerning feasibility
of the plan. 11 U.S.C. § 1325(6).

Till

In addition, the Debtor must pay the present value of the secured
claim by paying the creditor a discount rate of interest as measured
by the formula rate expressed by the United States Supreme Court in
Till v. SCS Credit Corp., 541 U.S. 465 (2004) (holding that prime

and risk factors are generally deemed to be 1-3%). *See, also Drive Fin. Servs., L.P. v. Jordan*, 521 F.3d 343 (5th Cir. 2008). In this case, the current prime rate is 5.25% but provides only 5% interest. Plan § 3.08. This treatment provides an interest rate at less than the prime rate and no interest for the risk factor described in *Till*.

The court will deny confirmation of the plan.

CIVIL MINUTE ORDER

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

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

Capital One, N.A.'s objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

13. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[FW-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL
7-3-2019 [[39](#)]

MIKAL JONES/MV
PETER FEAR
RESPONSIVE PLEADING

No Ruling

14. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[FW-3](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN
7-19-2019 [[53](#)]

MIKAL JONES/MV
PETER FEAR
RESPONSIVE PLEADING

No Ruling

15. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[WJH-1](#)

MOTION TO DISMISS CASE
10-1-2019 [[89](#)]

RUSSELL DILDAY/MV
PETER FEAR
RILEY WALTER/ATTY. FOR MV.

No Ruling

16. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[WW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-2019 [[25](#)]

RUSSELL DILDAY/MV
PETER FEAR
RILEY WALTER/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

17. [19-12931](#)-A-13 **IN RE: JOHN NEUFIELD**
[MHM-1](#)

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

Final Ruling

The case having been dismissed, the objection will be overruled as moot.

18. [19-12931](#)-A-13 **IN RE: JOHN NEUFIELD**
[MHM-2](#)

MOTION TO DISMISS CASE
8-30-2019 [\[25\]](#)

MICHAEL MEYER/MV

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).

The debtor has failed to provide the trustee with: i) the Class 1 checklist with the most recent mortgage statement, LBR 3015-1(b)(6); ii) Authorization to release information. LBR 3015-1(b)(6); iii) a required tax return (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed), no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* at § 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.

19. [19-12931](#)-A-13 **IN RE: JOHN NEUFIELD**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-11-2019 [[30](#)]

MICHAEL MEYER/MV

Final Ruling

The case having been dismissed, the objection will be overruled as moot.

20. [19-12536](#)-A-13 **IN RE: RAYMOND JONES AND KAREN YOCKEY-JONES**
[JRL-1](#)

MOTION TO CONFIRM PLAN
9-12-2019 [[27](#)]

RAYMOND JONES/MV
JERRY LOWE

No Ruling.

21. [19-12536](#)-A-13 **IN RE: RAYMOND JONES AND KAREN YOCKEY-JONES**
[JRL-2](#)

MOTION TO AVOID LIEN OF THE HEIGHTS ON COPPER COMMUNITY
9-12-2019 [[34](#)]

RAYMOND JONES/MV
JERRY LOWE

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Disposition: Denied without prejudice

Order: Civil Minute Order

The motion seeks to avoid a lien held by the Heights on Copper Community Association. Section 522(f) allows this court avoid judicial liens that impair an exemption. "[J]udicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). In contrast, "[S]tatutory lien" means lien arising solely by force of a

statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." 11 U.S.C. § 101(53). This appears to be a statutory lien and avoidable, if at all, by 11 U.S.C. § 545. Accordingly, this motion will be denied.

CIVIL MINUTE ORDER

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

Raymond Jones and Karen Yockey-Jones's Motion to Value Collateral have been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

22. [19-13341](#)-A-13 **IN RE: GARY/JENNIFER FOX**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-23-2019 [[15](#)]

GABRIEL WADDELL

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

The plan does not comply with § 1325(b) because it neither pays unsecured creditors in full nor provides payment to unsecured creditors of all projected disposable income. See 11 U.S.C. § 1325(b). Form 122C-2 shows disposable income of \$321.29 per month over the next five years (ECF #1). However, Trustee stated the disposable income was misstated. Trustee stated the debtors are claiming an additional \$400.00 for transportation operating costs. The apparent basis for the claim is the "older vehicle operating expense" that the trustee contends is prohibited by *Drummond v.*

Luedtke, 508 B.R. 408 (9th Cir. BAP 2014)). The debtors' disposable income should therefore be increased to \$721.29. This would require a payment of \$31,277.40 to unsecured creditors. The plan only pays unsecured creditors \$19,2017.75. The objection will be sustained.

CIVIL MINUTE ORDER

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

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

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

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

23. [12-19544](#)-A-13 **IN RE: JONG CHOI**
[DMG-6](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
9-10-2019 [[91](#)]

JONG CHOI/MV
D. GARDNER

Final Ruling

A claim objection is a contested matter. See Fed. R. Bankr. P. 3007 advisory committee's note. As a contested matter, the objection must be served in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(b). Service on corporations must be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the objection was insufficient. The objection was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

CIVIL MINUTE ORDER

IT IS ORDERED that the objection is continued to November 21, 2019 at 9:00 a.m. No later than October 23, 2019, movant is to serve motion and notice of continuance, as required by 7004(b)(3) on Discover Bank. Written opposition is due November 14, 2019.

24. [12-19544](#)-A-13 **IN RE: JONG CHOI**
[DMG-7](#)

MOTION TO AVOID LIEN OF US BANK
9-10-2019 [\[96\]](#)

JONG CHOI/MV
D. GARDNER

Final Ruling

A claim objection is a contested matter. See Fed. R. Bankr. P. 3007 advisory committee's note. As a contested matter, the objection must be served in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(b). Service on corporations must be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the objection was insufficient. The objection was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

CIVIL MINUTE ORDER

IT IS ORDERED that the objection is continued to November 21, 2019 at 9:00 a.m. No later than October 23, 2019, movant is to serve motion and notice of continuance, as required by 7004(b)(3) on US Bank. Written opposition is due November 14, 2019.

25. [19-13645](#)-A-13 **IN RE: GUSTAVO/BEATRIZ ROCHA**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE
9-9-2019 [\[9\]](#)

GUSTAVO ROCHA/MV
STEPHEN LABIAK

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2016 Nissan Versa. 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 \$7,675.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2016 Nissan Versa has a value of \$7,675.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7,675.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

26. [19-12848](#)-A-13 **IN RE: JOHN LOWE**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-3-2019 [[27](#)]

MICHAEL MEYER/MV
JERRY LOWE

Final Ruling.

The objection having been withdrawn, the matter will be dropped as moot.

27. [19-12848](#)-A-13 **IN RE: JOHN LOWE**
[MHM-4](#)

MOTION TO DISMISS CASE
9-18-2019 [[35](#)]

MICHAEL MEYER/MV
JERRY LOWE

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$1,726.80.

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.

28. [19-11449](#)-A-13 **IN RE: DAVID DELAO**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
6-24-2019 [[50](#)]

MICHAEL MEYER/MV
VARDUHI PETROSYAN
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

This is a continued motion from 8/28/19 to coincide with the Motion to Confirm Plan (#29).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case for failure to confirm a Chapter 13 plan and for unreasonable delay by the debtor that is prejudicial to the creditors.

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to comply with the 75-day order the court imposed for achieving confirmation of a chapter 13 plan in this case. The court issued an order providing that a plan must be confirmed no later than the first hearing date available after the 75-day period that commenced on the June 13, 2019 hearing date. The debtor has missed this deadline. A plan has not been confirmed. This case must be dismissed.

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 considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted given the debtor's failure to confirm a chapter 13 plan no later than the 75-day deadline established by the court. The court hereby dismisses this case.

29. [19-11449](#)-A-13 **IN RE: DAVID DELAO**
[VRP-2](#)

MOTION TO CONFIRM PLAN
8-27-2019 [[74](#)]

DAVID DELAO/MV
VARDUHI PETROSYAN
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

TRUSTEE'S OBJECTION TO CONFIRMATION OF PLAN

Trustee stated the plan fails to provide that the value of property to be distributed is at least the amount that would be paid on such claim if the estate of Debtor was liquidated under Chapter 7. The court shall confirm a plan if "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." 11 U.S.C. §1325(a)(4). In this case, Trustee cannot tell if there was a fraudulent transfer of which a Chapter 7 trustee would be able to collect against.

In addition, the plan is not feasible as required by § 1325(a)(6) of the Bankruptcy Code. See 11 U.S.C. § 1325(a)(6). The plan requires the trustee to pay amounts exceeding the monthly plan payment made to the trustee. Debtor has not mentioned how he will be able to afford the increase in plan payment.

Finally, the plan does not comply with § 1325(b) because it does not provide payment to unsecured creditors of all projected disposable income. See 11 U.S.C. § 1325(b). Form 122C-2 shows disposable income of \$6,271.42 (below median) over the next five years. The Trustee has calculated that Debtor received at least \$7,683.34 (above median) in the six months prior to filing.

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 confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

30. [19-13250](#)-A-13 **IN RE: CATALINA CASTILLO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-23-2019 [[14](#)]

THOMAS GILLIS

No Ruling.

31. [19-13550](#)-A-13 **IN RE: JOEL/KIM SCHOLAR**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-12-2019 [\[13\]](#)

WILMINGTON TRUST, NATIONAL
ASSOCIATION/MV
DARLENE VIGIL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 10455 East Acacia Avenue, Clovis, CA 93619

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

STAY RELIEF

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

The debtor has missed 19 pre-petition payments, aggregating \$32,294.17, due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

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.

Wilmington Trust, National Association'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 10455 East Acacia Avenue, Clovis, CA 93619, 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.

32. [19-13151](#)-A-13 **IN RE: KRISTIN VOOLSTRA**
[PPR-1](#)

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

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

No Ruling

33. [19-13151](#)-A-13 **IN RE: KRISTIN VOOLSTRA**
[TCS-2](#)

MOTION TO VALUE COLLATERAL OF PORTFOLIO RECOVERY ASSOCIATES,
LLC
9-16-2019 [[34](#)]

KRISTIN VOOLSTRA/MV
TIMOTHY SPRINGER

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2013 Dodge Journey SXT V. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$6,100.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2013 Dodge Journey SXT V has a value of \$6,100.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6,100.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

34. [19-13151](#)-A-13 **IN RE: KRISTIN VOOLSTRA**
[TCS-3](#)

MOTION TO VALUE COLLATERAL OF PRESTIGE FINANCIAL SERVICES
9-16-2019 [\[38\]](#)

KRISTIN VOOLSTRA/MV
TIMOTHY SPRINGER
STIPULATION, ECF NO. 50

Final Ruling

The parties have resolved the matter by stipulation, ECF #50. The matter will be dropped from calendar.

35. [19-12953](#)-A-13 **IN RE: ELIANE GIFFORD**
[MHM-2](#)

MOTION TO DISMISS CASE
9-9-2019 [\[16\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Conditionally denied

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) because the debtors failed to attend a scheduled § 341 meeting of creditors. Because the debtors' failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case on condition that the debtors attend the next creditors' meeting. But if the debtors do not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is conditionally denied. It is denied on the condition that both debtors attend the next continued § 341(a) meeting of creditors. But if both debtors do not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

36. [19-13353](#)-A-13 **IN RE: REGINALD KERNEY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-23-2019 [[17](#)]

TIMOTHY SPRINGER

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

Trustee has not yet concluded the Meeting of the Creditors as Debtor failed to appear at the 341 hearing on September 18, 2019. The continued meeting will be held on October 29, 2019.

Also, Debtor provided paystubs to the Trustee, but nothing on the paystub verifies the date they were received. Trustee cannot verify that all the paystubs were properly submitted and that the debtor has complied with all applicable provisions. 11 U.S.C. §521 and/or F.R.B.P 1007(b). Debtor has only responded with unsworn opposition to Trustee's contention.

CIVIL MINUTE ORDER

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

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

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

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

37. [16-13854](#)-A-13 **IN RE: ANNE RODY**
[PK-3](#)

MOTION TO MODIFY PLAN
8-29-2019 [[58](#)]

ANNE RODY/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

No Ruling.

38. [19-11256](#)-A-13 **IN RE: DAVID/BILLIE KELLEY**
[MHM-3](#)

MOTION TO DISMISS CASE
9-17-2019 [[60](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN

Final Ruling

The case having been dismissed per Order, ECF #71, this matter will be denied as moot.

39. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-4](#)

MOTION TO CONFIRM CHAPTER 12 PLAN
9-5-2019 [[68](#)]

FRANK FAGUNDES/MV
RILEY WALTER
LIMITED OBJECTION

No Ruling.

40. [19-12961](#)-A-13 **IN RE: LEONARDO GONZALEZ**
[MHM-1](#)

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

SCOTT LYONS

No Ruling.

41. [19-12961](#)-A-13 **IN RE: LEONARDO GONZALEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
8-30-2019 [\[22\]](#)

MICHAEL MEYER/MV
SCOTT LYONS
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

42. [19-13468](#)-A-13 **IN RE: ROBERTO JAUREGUI**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-23-2019 [\[13\]](#)

THOMAS GILLIS

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Trustee stated: i) Debtor's plan payment is insufficient to cover all claims and administrative expenses, 11 U.S.C. §1322(a); ii) Anselmo Martinez is a co-debtor on the mortgage, but is not listed in Schedule H, 11 U.S.C. §521 and/or F.R.B.P 1007(b); iii) Debtor testified that his girlfriend has contributed \$2,200.00 to the household expenses for more than six months, but failed to list his girlfriend's contribution income on Official Form 122C-1, See F.R.B.P 1007(b).

CIVIL MINUTE ORDER

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

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

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

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

43. [14-12769](#)-A-13 **IN RE: ELEODORO/MARGARITA VASQUEZ**
[MHM-3](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
9-12-2019 [[98](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

Final 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

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).

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." 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 do so. *Id.*

Next, the holder of the claim 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 dispute (or agree) that the debtor has paid in full the amount required to cure the default on the claim or 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).

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. It will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

44. [15-11870](#)-A-13 **IN RE: GLENDA LANDIN**
[SL-2](#)

MOTION TO INCUR DEBT
9-24-2019 [\[71\]](#)

GLENDA LANDIN/MV
SCOTT LYONS

Tentative Ruling

Motion: Approve New Debt [Vehicle Loan]

Notice: LBR 9014-1(f)(2); no 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). 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 debtor seeks to incur new debt to finance the purchase of a vehicle. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

45. [19-12372](#)-A-13 **IN RE: THIESEN HERNANDEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
9-17-2019 [\[37\]](#)

MICHAEL MEYER/MV
RICHARD STURDEVANT

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$4,512.00.

CIVIL MINUTE ORDER

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

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

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

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

46. [17-10573](#)-A-13 **IN RE: JOEL/BETTY HILL**
[NFS-1](#)

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

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

No Ruling.

47. [19-13376](#)-A-13 **IN RE: OPAL RIDER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-23-2019 [\[18\]](#)

STEPHEN LABIAK
RESPONSIVE PLEADING

No Ruling.

48. [19-13280](#)-A-13 **IN RE: JOE/LILLIANA ALVES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-24-2019 [[23](#)]

JOSEPH ANGELO

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Trustee stated the plan was not proposed in good faith. Debtors failed to complete Schedules I, H, and their Statement of Financial Affairs correctly. Debtors have failed to provide Trustee their financial statements for the 6 months prior to filing. Also, Debtors' plan also does not provide all projected disposable income to unsecured creditors.

CIVIL MINUTE ORDER

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

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

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

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

49. [19-12081](#)-A-13 **IN RE: DONNIE/SHUA XIONG**
[MHM-3](#)

SHOW CAUSE HEARING RE: MOTION TO DISGORGE FEES
7-2-2019 [[28](#)]

MICHAEL MEYER/MV
PETER BUNTING

No Ruling

50. [19-12282](#)-A-13 **IN RE: VICTOR FIGUEROA**
[MHM-2](#)

MOTION TO DISMISS CASE
9-17-2019 [[26](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

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 \$1,320.00.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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.

51. [19-13087](#)-A-13 **IN RE: DAVID/NANCY CASTRO**
[MHM-1](#)

MOTION TO DISMISS CASE
9-18-2019 [\[38\]](#)

MICHAEL MEYER/MV
PETER BUNTING
DISMISSED 9/20/19

Final Ruling

The case having been dismissed, the matter is dropped as moot.

52. [17-14292](#)-A-13 **IN RE: JUAN MEDINA- HERRERA AND STEFANIEROSE**
MEDINA
[NES-5](#)

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

JUAN MEDINA- HERRERA/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

Final Ruling

The court having ordered confirmation of the modified plan, ECF #139, this matter will be denied as moot.

53. [19-12993](#)-A-13 **IN RE: WILLIAM COOK**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-18-2019 [\[67\]](#)

DISMISSED

Final Ruling

The case having been dismissed, the order to show cause will be dropped as moot.

54. [19-12993](#)-A-13 **IN RE: WILLIAM COOK**
[MHM-1](#)

MOTION TO DISMISS CASE
9-3-2019 [[61](#)]

MICHAEL MEYER/MV
DISMISSED

Final Ruling

The case having been dismissed, the motion will be dropped as moot.

55. [19-13493](#)-A-13 **IN RE: JOSHUA FULFER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-20-2019 [[13](#)]

TIMOTHY SPRINGER

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Trustee stated the debtors have failed to appear at the 341 meeting. Continued 341 meeting is set to 10/29/19 at 10:00 a.m.

CIVIL MINUTE ORDER

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

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

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

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

56. [19-14216](#)-A-13 **IN RE: NICOLE SCOTT**
[SJS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-3-2019 [\[10\]](#)

NICOLE SCOTT/MV
SUSAN SALEHI

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

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

EXTENSION OF THE STAY

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

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

CIVIL MINUTE ORDER

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

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

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

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

57. [19-14025](#)-A-13 **IN RE: KATHRYN MCCOON**

MOTION TO EXTEND AUTOMATIC STAY
10-3-2019 [[9](#)]

KATHRYN MCCOON/MV

No Ruling.

58. [16-13854](#)-A-13 **IN RE: ANNE RODY**
[PK-2](#)

CONTINUED MOTION TO INCUR DEBT
8-29-2019 [[52](#)]

ANNE RODY/MV
PATRICK KAVANAGH

No Ruling.