

**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 19, 2017
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

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

1. [16-14304](#)-A-13 TINA MORENO MOTION TO MODIFY PLAN
[MJA](#)-1 9-5-17 [[61](#)]
TINA MORENO/MV
MICHAEL ARNOLD/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [17-11605](#)-A-13 OFELIA GARCIA MOTION FOR RELIEF FROM
[APN](#)-2 AUTOMATIC STAY
SANTANDER CONSUMER USA, 9-6-17 [[48](#)]
INC./MV
THOMAS GILLIS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Final Ruling

Motion: Stay Relief [Both Automatic Stay and Co-Debtor Stay]

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2014 Ford Fusion

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).

The debtor and non-filing co-debtor have defaulted on a loan from the moving party secured by the property described above, and 4 postpetition payments are past due.

In addition, no insurance is being maintained on the vehicle by the debtor and the nonfiling co-debtor.

The co-debtor has not opposed the motion. Based on the same factual grounds provided for relief from the automatic stay (lack of insurance), relief from the co-debtor stay is warranted under § 1301(c)(3).

The motion for relief from stay and from the co-debtor stay of § 1301 will be granted. The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. No other relief will be awarded.

3. [17-11605](#)-A-13 OFELIA GARCIA
[MHM](#)-2

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
9-26-17 [[59](#)]

THOMAS GILLIS/Atty. for dbt.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan

Notice: LBR 3015-1(c) (4); no written opposition required

Disposition: Overruled as moot

Order: Civil minute order

MOOTNESS

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

4. [17-11605](#)-A-13 OFELIA GARCIA
[TOG](#)-1
OFELIA GARCIA/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
9-15-17 [[54](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [17-13113](#)-A-13 FRANK/STEPHANIE HERNANDEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-15-17 [[32](#)]

SCOTT LYONS/Atty. for dbt.
\$200.00 INSTALLMENT PAYMENT
9/19/17

Final Ruling

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

6. [17-12815](#)-A-13 JEFFREY/CHRISTINA STANLEY MOTION TO DISMISS CASE
[MHM](#)-1 9-13-17 [[17](#)]
JEFFREY STANLEY/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

7. [14-13416](#)-A-12 JOAO/LUZIA VAZ MOTION FOR COMPENSATION BY THE
[TCS](#)-9 LAW OFFICE OF TIMOTHY C.
SPRINGER FOR NANCY D. KLEPAC,
DEBTORS ATTORNEY(S)
8-31-17 [[123](#)]

NANCY KLEPAC/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 12 case, Law Offices of Timothy C. Springer has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5000.00 and reimbursement of expenses in the amount of \$0.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 12 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

CIVIL MINUTE ORDER

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

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

Law Offices of Timothy C. Springer'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 \$5000.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$5000.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5000.00 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 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.

8. [14-13417](#)-A-12 DIMAS/ROSA COELHO
[TCS](#)-9

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF TIMOTHY C.
SPRINGER FOR NANCY D. KLEPAC,
DEBTORS ATTORNEY(S)
8-31-17 [[131](#)]

NANCY KLEPAC/Att. 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 12 case, Law Offices of Timothy C. Springer has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in

the amount of \$5000.00 and reimbursement of expenses in the amount of \$0.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 12 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

CIVIL MINUTE ORDER

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

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

Law Offices of Timothy C. Springer'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 \$5000.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$5000.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5000.00 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 trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

9. [14-10218](#)-A-13 JESUS CASTELLANO AND MOTION FOR COMPENSATION BY THE
[JDW](#)-6 ANGIE VEGA LAW OFFICE OF THE WINTER LAW
GROUP FOR JOEL D. WINTER,
DEBTORS ATTORNEY(S)
9-26-17 [[65](#)]

JOEL WINTER/Atty. for dbt.

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Joel Winter has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1781.00 and reimbursement of expenses in the amount of \$0.00. The applicant filed an executed copy of Form EDC 3-096. But the applicant did not check the appropriate box on the chapter 13 plan that was confirmed, so the remainder of the flat fee of \$3000 was not approved as part of plan confirmation.

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

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

CIVIL MINUTE ORDER

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

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

Joel Winter'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 \$1781.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$1781.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1781.00 shall be allowed as an administrative expense to be paid through the plan.

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

10. [17-12320](#)-A-13 ROBERTO/VICKI GUTIERREZ MOTION TO VALUE COLLATERAL OF
[TCS](#)-1 ALLY FINANCIAL, INC.
ROBERTO GUTIERREZ/MV 9-14-17 [[45](#)]
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral

Notice: Written opposition filed by the responding party

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The motion seeks to value collateral that is a 2013 Chevy Cruze LT. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

11. [17-12824](#)-A-13 RAFAEL/MARTHA HERNANDEZ MOTION TO DISMISS CASE
[MHM](#)-1 9-1-17 [[32](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [17-12824](#)-A-13 RAFAEL/MARTHA HERNANDEZ
[MHM](#)-2

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
9-28-17 [[40](#)]

PETER BUNTING/Atty. for dbt.

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

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 debtors have proposed a chapter 13 plan that pays \$770 per month and a zero percent dividend to unsecured creditors. The court takes judicial notice of the debtors' plan and its contents on its docket. Fed. R. Evid. 201(b)-(c).

The trustee objects to confirmation of the plan on grounds that it fails to satisfy the liquidation requirement. See 11 U.S.C. § 1325(a)(4). Specifically, the trustee argues that the zero percent dividend to unsecured creditors is insufficient to satisfy liquidation because the debtors made transfers to an insider on a loan in the 12 months prior to filing. See 11 U.S.C. §§ 547(b), 550(a). The implication is that the trustee could augment the estate by the amount of these transfers, which would provide funds available in a hypothetical liquidation that must be paid to unsecured creditors in a confirmable plan. § 1325(a)(4).

The debtor has filed evidence on the docket about the nature of these transfers. In a declaration, Martha Hernandez testified that she and her spouse owed her sister Elizabeth Coronado money for a personal loan. Hernandez Decl. ¶ 2. Payments were made up to the date of the petition in the amount of \$181 per month. *Id.* ¶ 3. These payments aggregated \$2160 during the 12 months prior to filing. *Id.* ¶ 4.

Recognizing the potential impact of § 547(b), the debtor asserted that "[a]ll payments were made on or about the 21 [sic] of each month in the ordinary course of my financial affairs." Hernandez Decl. ¶ 3. This particular evidence is apparently offered to bring the debtors transfers to Coronado within the scope of the "ordinary course" defense of § 547(c)(2).

"To establish [an] 'ordinary course' defense, the [party asserting the defense] has the burden to demonstrate (1) that the transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee; and (2) that it was (a) made in the ordinary course of business or financial affairs of the debtor and the transferee; or (b) made according to ordinary business terms." *In re Evergreen Oil, Inc.*, 2017 WL 1371296 (B.A.P. 9th Cir. Apr. 10, 2017).

The trustee argues that the standard for the ordinary course defense requires more than merely making payments in the ordinary course of the debtor's financial affairs. Instead, the standard also requires that the debt pursuant to which the transfers were made was incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee. And also the standard requires that transfer have been made according to ordinary business terms.

The court agrees with the trustee's argument. The debtor's evidence fails to show that the debt pursuant to which the transfers were made was incurred in the ordinary course of business or financial affairs of the debtor and the transferee. The evidence also does not address whether the transfers were made in the ordinary course of business—the conclusory statement that they were made in the ordinary course is not sufficient. Thus, debtors' evidence is not probative to show that the transfers are within the ordinary course defense of § 547(c).

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.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

13. [17-12328](#)-A-13 CALVIN TRIPPETT
[MHM](#)-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

CONTINUED MOTION TO DISMISS
CASE
8-16-17 [[22](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [17-12328](#)-A-13 CALVIN TRIPPETT
[TCS](#)-1
CALVIN TRIPPETT/MV

MOTION TO VALUE COLLATERAL OF
NEW CENTURY MORTGAGE AND/OR
MOTION TO VALUE COLLATERAL OF
NATIONSTAR MORTGAGE, LLC ,
MOTION TO VALUE COLLATERAL OF
THE BANK OF NEW YORK MELLON
9-19-17 [[29](#)]

TIMOTHY SPRINGER/Atty. for dbt.
ORDER, ECF NO. 40

Final Ruling

The parties have resolved the matter by stipulation. The matter will be dropped from calendar as moot.

15. [17-12533](#)-A-13 ALEX BECERRA
[JDR](#)-2
ALEX BECERRA/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
ONE MAIN FINANCIAL
9-19-17 [[28](#)]

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Disposition: Denied without prejudice

Order: Civil minute order

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. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(7). Factual information relevant to the hanging paragraph of §

1325(a) is also an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

16. [12-18734](#)-A-13 RICHARD OAXACA MOTION TO MODIFY PLAN
[ASW](#)-2 8-4-17 [[39](#)]
RICHARD OAXACA/MV
ADRIAN WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to November 8, 2017, at 9:00 a.m. in Bakersfield. Telephonic appearances are authorized, and encouraged.

17. [17-12539](#)-A-13 LUIS TAVARES CONTINUED MOTION TO DISMISS
[MHM](#)-1 CASE
MICHAEL MEYER/MV 8-15-17 [[27](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

18. [17-12539](#)-A-13 LUIS TAVARES MOTION TO DISMISS CASE
[MHM](#)-2 9-11-17 [[55](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [17-12539](#)-A-13 LUIS TAVARES MOTION TO CONFIRM PLAN
[TOG](#)-2 8-18-17 [[31](#)]
LUIS TAVARES/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

20. [17-12639](#)-A-13 JOSE VELOZ
[MHM](#)-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-1-17 [[18](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [16-13241](#)-A-13 MONIQUE BOOKOUT
[RSW](#)-4
MONIQUE BOOKOUT/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN
6-29-17 [[54](#)]

No Ruling

22. [17-13146](#)-A-13 DANIEL AMADOR
[MHM](#)-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
9-27-17 [[19](#)]

RESPONSIVE PLEADING

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

MOOTNESS

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

23. [17-12047](#)-A-13 TAMMY ABELS
2005 RESIDENTIAL TRUST 3-1/MV

PETER FEAR/Atty. for dbt.
JOSHUA SCHEER/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY 2005
RESIDENTIAL TRUST 3-1
7-25-17 [[36](#)]

Final Ruling

The objection will be dropped as moot given the court's signing of the confirmation order in this case.

24. [17-12847](#)-A-13 LESLIE RATA
[SAH](#)-1
LESLIE RATA/MV
SUSAN HEMB/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
TD RCS/MOR FURNITURE FOR LESS
8-28-17 [[14](#)]

Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of personal property described as a Tempurpedic queen mattress with box

spring and an electric recliner. 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 \$1099.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a Tempurpedic queen mattress with box spring and an electric recliner has a value of \$1099. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1099 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. [17-13147](#)-A-13 RAY ESQUEDA
[MHM](#)-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
9-27-17 [[17](#)]

PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [16-12149](#)-A-13 IRMA CASTRO
[PBB](#)-2
IRMA CASTRO/MV
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN
9-7-17 [[43](#)]

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.

27. [17-10250](#)-A-13 SHENG/CHAO VANG
[MHM](#)-2
MICHAEL MEYER/MV
GABRIEL WADDELL/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-12-17 [[98](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [17-12451](#)-A-13 DAVID/DELIA HAYES
[DMH](#)-4
DAVID HAYES/MV
RESPONSIVE PLEADING

AMENDED MOTION TO CONFIRM PLAN
9-1-17 [[31](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

MOOTNESS

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to confirm is denied as moot.

29. [14-11752](#)-A-13 DEBRA RODRIGUEZ
[TCS](#)-1
DEBRA RODRIGUEZ/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO AVOID LIEN OF KINGS
CREDIT SERVICES
9-26-17 [[24](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$134,412.60

All Other Consensual Liens or Senior Judicial Liens: \$1501.89

Exemption: \$80,000.00

Value of Property: \$80,000.00

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).

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).

The respondent's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

30. [14-11752](#)-A-13 DEBRA RODRIGUEZ
[TCS-2](#)
DEBRA RODRIGUEZ/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO AVOID LIEN OF KINGS
CREDIT SERVICES
9-26-17 [[28](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$888.39

All Other Consensual Liens or Senior Judicial Liens: \$613.50

Exemption: \$80,000.00

Value of Property: \$80,000.00

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).

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).

The respondent's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

31. [14-11752](#)-A-13 DEBRA RODRIGUEZ
[TCS](#)-3
DEBRA RODRIGUEZ/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO AVOID LIEN OF DENNIS
M. WRIGHT
9-26-17 [[32](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$613.50

All Other Consensual Liens or Senior Judicial Liens: \$0.00

Exemption: \$80,000.00

Value of Property: \$80,000.00

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).

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).

The respondent's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

32. [17-11652](#)-A-13 GREGORY/ROUZANA TOROSSIAN MOTION TO CONFIRM PLAN
[MJA](#)-2 8-21-17 [[59](#)]
GREGORY TOROSSIAN/MV
MICHAEL ARNOLD/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

The motion to confirm has been withdrawn, But, the court intends to issue a 75-day order to achieve confirmation as part of its ruling dismissing this matter.

33. [17-12852](#)-A-13 CARLOS LEAL MOTION TO DISMISS CASE
[MHM](#)-1 9-5-17 [[18](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

34. [17-12852](#)-A-13 CARLOS LEAL MOTION TO CONFIRM PLAN
[TCS](#)-1 9-6-17 [[22](#)]
CARLOS LEAL/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING/WITHDRAWN

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.

35. [13-14553](#)-A-13 JOHN/DONNA SPATAFORE
[JMA](#)-6

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF ARNOLD LAW GROUP,
APC. FOR MICHAEL J. ARNOLD,
DEBTORS ATTORNEY(S)
9-5-17 [[63](#)]

JOSEPH ARNOLD/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, Arnold Law Group, APC has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$7653.00 and reimbursement of expenses in the amount of \$347.00.

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.

Arnold Law Group, APC'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 \$7653.00 and

reimbursement of expenses in the amount of \$347.00. The aggregate allowed amount equals \$8000.00. As of the date of the application, the applicant held a retainer in the amount of \$2000.00. The amount of \$6000.00 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.

36. [17-12453](#)-A-13 ROBERT/SALLY MALY
[MHM](#)-3

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
9-28-17 [[35](#)]

JERRY LOWE/Atty. for dbt.

No Ruling

37. [17-13065](#)-A-13 AMANDEEP RANDHAWA
[PP-1](#)
ELEMENT TRANSPORTATION II,
LLC/MV
PETER FEAR/Atty. for dbt.
DONNA PARKINSON/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY ELEMENT TRANSPORTATION
II, LLC
9-26-17 [[33](#)]

Final Ruling

This matter is continued to November 8, 2017, at 9:00 a.m. in Bakersfield. Telephonic appearances are authorized, and encouraged.

38. [13-10672](#)-A-13 SAMUEL/PAMELA FRAIJO
[JMA](#)-2
SAMUEL FRAIJO/MV

MOTION TO SUBSTITUTE DEBTOR AS
REPRESENTATIVE OF THE DECEASED,
FOR EXEMPTION FROM FINANCIAL
MANAGEMENT COURSE, FOR
CONTINUED ADMINISTRATION, FOR
WAIVER OF CERTIFICATION
REQUIREMENTS FOR ENTRY OF
DISCHARGE PURSUANT TO 11 U.S.C.
SECTION 1328
8-25-17 [[36](#)]

JOSEPH ARNOLD/Atty. for dbt.

Final Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

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

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

CONTINUED ADMINISTRATION OF THE CASE

Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1016-1(b), the court will authorize further administration of this case.

SUBSTITUTION OF THE PROPER PARTY

Furthermore, the court will order substitution of the proper party. Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bankr. P. 7025; LBR 1016-1(b)(1). The court will substitute the surviving joint debtor in the stead of the deceased debtor. The court will authorize the surviving joint debtor's service as the deceased debtor's representative.

WAIVER OF POST-PETITION EDUCATION REQUIREMENT

The motion also requests a waiver of the requirement to complete, after the petition date, the personal financial management course described in § 111. See 11 U.S.C. § 1328(g)(1). But this post-petition requirement does not apply when the debtor is a person described in § 109(h)(4). *Id.* § 1328(g)(2). The court finds that the joint-debtor's death constitutes incapacity under § 109(h)(4) and will grant a waiver of the § 1328(g)(1) requirement.

ORDER INSTRUCTIONS

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. The court also waives the requirement that the debtor complete an instructional course concerning personal financial management as required by § 1328(g). It is further ordered that the court finds that continued administration of the estate is possible and in the best interests of the parties. The court substitutes [surviving debtor's name] in the stead of the deceased debtor, and authorize the surviving joint debtor's service as the deceased debtor's representative."

39. [17-10474](#)-A-13 ALVARO DIAZ AND MARISELA CONTINUED MOTION TO DISMISS
[MHM](#)-2 LUA CASE
MICHAEL MEYER/MV 7-21-17 [[52](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

40. [17-10474](#)-A-13 ALVARO DIAZ AND MARISELA CONTINUED MOTION TO CONFIRM
[TOG](#)-3 LUA PLAN
ALVARO DIAZ/MV 8-16-17 [[58](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

41. [15-10389](#)-A-13 JOANN TAYLOR-ANDERSON
[MHM](#)-1
MICHAEL MEYER/MV

OBJECTION TO CLAIM OF
DEPARTMENT OF THE
TREASURY-INTERNAL REVENUE
SERVICE, CLAIM NUMBER 4
8-30-17 [[24](#)]

VARDUHI PETROSYAN/Atty. for dbt.

Final Ruling

Objection: Objection to Claim [Based on Improper Withdrawal of Claim]

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

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.

Federal Rule of Bankruptcy Procedure 3006 permits a creditor to withdraw a proof of claim as of right with some exceptions. This rule provides in pertinent part: "A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to § 705(a) or appointed pursuant to § 1102 of the Code." Fed. R. Bankr. P. 3006.

APPLICATION

In this case, the claimant has participated significantly in this case by accepting distributions on its claim. The claimant improperly withdrew the claim without a court order by amending it to \$0.00 (rather than filing a satisfaction of claim). *See Young v. Condor Sys. (In re Condor Sys.)*, 296 B.R. 5, 11 (B.A.P. 9th Cir. 2003) (amending a claim to \$0.00 for the purpose of mooting a claim objection is tantamount to withdrawing claim). This resulted in an overpayment to the claimant in the amount of the trustee's distributions to the claimant.

As a result, the court will allow the claim in the amount of the distributions made by the trustee to the claimant. The claim will be allowed as a priority unsecured claim in the amount of \$204.02.

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. 4-1 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 a priority unsecured claim in the amount of \$204.02.

42. [15-12589](#)-A-13 DILLARD/JANICE MCKEEVER MOTION FOR COMPENSATION FOR
[BCS](#)-3 BENJAMIN C. SHEIN, DEBTORS
ATTORNEY(S)
9-13-17 [[33](#)]

BENJAMIN SHEIN/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, Shein Law Group, PC has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2599.00 and reimbursement of expenses in the amount of \$202.33. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's

attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2599.00 and reimbursement of expenses in the amount of \$202.33. The aggregate allowed amount equals \$2801.33. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2801.33 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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

43. [17-13189](#)-A-13 JOHN/BOBBIE-ANN HEINRICH OBJECTION TO CONFIRMATION OF
AP-1 PLAN BY DITECH FINANCIAL LLC
DITECH FINANCIAL LLC/MV 10-3-17 [[37](#)]
JAMIE HANAWALT/Atty. for mv.

No Ruling

44. [17-13189](#)-A-13 JOHN/BOBBIE-ANN HEINRICH MOTION TO DISMISS CASE
[MHM](#)-1 9-28-17 [[31](#)]
MICHAEL MEYER/MV

Tentative Ruling

Motion: Dismiss Case

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). 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 credit a counseling certificate showing that the debtor received the required credit counseling within the 180-day period preceding the petition date. 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). And credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

The debtors have also filed an incomplete plan that is blank and unsigned. The debtors have not appeared at the scheduled § 341 meeting, and they have failed to provide required documents to the trustee (including 2016 federal and state tax returns, Class 1 mortgage checklist with payment coupon or last statement, and proof of income).

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

CIVIL MINUTE ORDER

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

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

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

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

45. [17-11690](#)-A-13 LUIS BARRAGAN
[MHM](#)-2
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
9-15-17 [[44](#)]

Tentative Ruling

Because the only ground for dismissal was the failure to confirm a plan, and because the court has tentatively confirmed a plan in this case on this calendar, the court will deny the motion to dismiss as moot.

46. [17-11690](#)-A-13 LUIS BARRAGAN
[TOG](#)-2
LUIS BARRAGAN/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
8-31-17 [[35](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor 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.

47. [17-13190](#)-A-13 JOSE DE LA GARZA
[APN](#)-1
WELLS FARGO BANK, N.A./MV
RICHARD STURDEVANT/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-13-17 [[16](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2011 Chevrolet Camaro

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 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 1 postpetition payments are delinquent and 4 prepetition payments are delinquent. The total past due balance of principal and interest is approximately \$2860.70.

Alternatively, because the plan which has not been confirmed does not provide for the moving party's claim and does not mention its collateral, the court concludes that such property is not necessary to the debtor's financial reorganization. The moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

Therefore, 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.

48. [17-10294](#)-A-13 VERONICA/RAFAEL CHAVEZ MOTION TO CONFIRM PLAN
[PBB](#)-1 8-29-17 [[81](#)]
VERONICA CHAVEZ/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING/WITHDRAWN

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.

49. [17-13668](#)-A-13 DARRELL/DEBRA TOMLIN MOTION TO EXTEND AUTOMATIC STAY
[JAD](#)-2 10-11-17 [[14](#)]
DARRELL TOMLIN/MV
JESSICA DORN/Atty. for dbt.
OST

Tentative Ruling

Motion: Extend Stay, 11 U.S.C. § 362(c)(3)

Notice: LBR 9014-1(f)(3) and order shortening time; no written opposition required

Disposition: Denied

Order: Civil minute order

Debtors Darrell Tomlin and Debra Tomlin move under 11 U.S.C. § 362(c)(3) to extend the stay.

DISCUSSION

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). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before

the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse" When the dismissal was caused by the debtor's failure to file or amend the petition or other documents, mere inadvertence or negligence is not a substantial excuse *unless* the dismissal was caused by the negligence of debtor's attorney. *Id.* § 362(c)(3)(C)(i)(II)(aa).

Here, the debtors had one previous case within the last year. No. 17-10235. The case was dismissed on the Chapter 13 trustee's motion. Among the stated reasons was the debtors' failure to file amended Schedules A/B and D to reflect a timeshare and the debt associated with it. Motion to Dismiss, p. 2, lines 1-4, March 24, 2016, ECF # 24. The debtors admitted the inaccuracy of their schedules and acknowledged their need to amend those schedules. Response ¶ 6, April 13, 2017, ECF # 30. But they did not do so.

Absent a showing of substantial excuse in failing to do so, the present filing is presumptively not in good faith. 11 U.S.C. § 362(c)(3)(i)(II)(aa). That presumption may be rebutted only by a showing of clear and convincing evidence to the contrary. Neither the instant motion, nor the previous case, provide any indication of a substantial excuse in failing to amend Schedules A/B and D. Moreover, the debtors' joint declaration in support of the motion does not provide clear and convincing evidence of their good faith. Accordingly, the motion will be denied.

CIVIL MINUTE ORDER

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

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

Darrell Tomlin and Debra Tomlin's motion has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied.