

**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 22, 2015
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [15-12203](#)-A-13 WILLIAM SEUELL
SL-1
WILLIAM SEUELL/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
8-27-15 [[48](#)]

Tentative Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

NOTICE OF PLAN CONFIRMATION

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The chapter 13 trustee states that the debtor admitted at the § 341 meeting of creditors that he has a domestic support obligation owed to Veronica Gomez. The court has reviewed the copy of the court's matrix attached to the proof of service for this motion. Some of the names on the left hand column are partially visible or not visible. In any event, Veronica Gomez does not appear to be on the service list.

Unless the debtor contends at the hearing that he does not owe a domestic support obligation to Veronica Gomez, the court will deny the motion without prejudice.

75-DAY BAR

This case was filed on May 30, 2015, approximately 4.5 months ago. The court will sua sponte issue a 75-day order for confirmation of a chapter 13 plan.

CIVIL MINUTE ORDER

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

The debtor's motion to confirm his First Modified Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

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).

2. [15-13604](#)-A-13 MARIO/DIANA PEREZ
JDW-1
U.S. BANK NATIONAL
ASSOCIATION/MV
PETER BUNTING/Atty. for dbt.
JOSHUA WAYSER/Atty. for mv.
WITHDRAWN

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-23-15 [[29](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [15-13604](#)-A-13 MARIO/DIANA PEREZ
PBB-1
MARIO PEREZ/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

FINAL HEARING RE: MOTION TO USE
CASH COLLATERAL
9-14-15 [[10](#)]

No tentative ruling.

4. [15-13410](#)-A-13 KIMBERLY SHACKELFORD
SAH-2
KIMBERLY SHACKELFORD/MV

SUSAN HEMB/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
1ST INVESTORS SERVICING
CORPORATION
9-3-15 [[12](#)]

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "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 motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

The proof of service shows that the motion was addressed CSC - Lawyers Incorporating Service in Sacramento, California. And an attachment to the proof reveals that this entity is a corporate agent for service of process. But the address shown on the proof does not indicate that the motion was mailed *to the attention of* an officer or an appropriate agent authorized to receive service. When service is made by mail upon a corporate entity pursuant to Rule 7004(b), service should not

merely address the mailing to the appropriate officer or agent without identifying that person's officer or agent status on behalf of the respondent. In this case, both the agent's status as an agent, and the respondent should have been identified as part of the mailing to CSC in Sacramento, CA.

5. [13-17712](#)-A-13 RUBEN OLVERA AND GLORIA MOTION FOR COMPENSATION FOR
PLF-4 CHAVEZ PETER L. FEAR, TRUSTEES
ATTORNEY(S)
9-16-15 [[135](#)]
- THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

6. [13-17712](#)-A-13 RUBEN OLVERA AND GLORIA MOTION FOR COMPENSATION FOR
SAS-2 CHAVEZ SHERYL A. STRAIN, CHAPTER 7
SHERYL STRAIN/MV TRUSTEE(S)
9-8-15 [[123](#)]
- THOMAS GILLIS/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

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

Disposition: Continued to December 17, 2015, at 9:00 a.m.

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, applicant Sheryl A. Strain was the former Chapter 7 trustee in this case before it was converted to a case under Chapter 13. The applicant has applied for an allowance of compensation in the amount of \$5076.75 and reimbursement of expenses in the amount of \$92.74.

Chapter 7 trustees are entitled to compensation for their work in a case under Chapter 7 that is converted to a case under Chapter 13. *In re Hages*, 252 B.R. 789, 794-95, 797-99 (Bankr. N.D. Cal. 2000). Subject to the statutory cap of § 326(a) of the Bankruptcy Code, *id.* at 795, "a chapter 7 trustee's compensation should be determined independently under § 330," *id.* at 798. Section 330 authorizes "reasonable compensation for actual, necessary services." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). Such amount is paid pro rata with other administrative expenses out of each distribution made by

the Chapter 13 trustee. See *id.* §§ 503(b)(2), 507(a)(2), 1322(a)(2), 1326(b)(1).

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

INSUFFICIENT GROUNDS

At this time, the court cannot determine with sufficient certainty the amount of moneys that will be distributed by the chapter 13 trustee for purposes of calculating the cap of § 326(a). A plan has not yet been confirmed. The court will continue the hearing on this motion to coincide with a hearing on confirmation of a chapter 13 plan.

In addition, the applicant has not provided sufficient factual detail for purposes of calculating the statutory cap. The trustee has not mathematically demonstrated the application of the statutory cap of § 326(a) to the anticipated plan payments (distributions) specified in a confirmable chapter 13 plan. Supplemental declarations may be filed by the applicant no later than 7 days before any confirmation hearing.

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.

IT IS ORDERED that the application is continued to December 17, 2015, at 9:00 a.m. No later than 7 days before any confirmation hearing, the applicant may file a supplemental declaration and exhibits, if any.

7. [15-12813](#)-A-13 MICHAEL/LAURA LEA DAY
MJH-3
MICHAEL DAY/MV
MARK HANNON/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
8-28-15 [[22](#)]

No tentative ruling.

8. [11-14215](#)-A-13 JOSEPHINE BAKER MOTION TO DISMISS CASE
MHM-2 9-3-15 [[47](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

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

9. [11-17816](#)-A-13 MARLOWE FOSSEN CONTINUED MOTION TO DISMISS
MHM-5 CASE
MICHAEL MEYER/MV 8-19-15 [[106](#)]
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [15-13222](#)-A-13 TOMASA AVILA ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-18-15 [[20](#)]

Final Ruling

If the installments of \$79 due September 14, 2015, and \$77 Due October 13, 2015, have not been paid by the time of the hearing, the case will be dismissed without further notice or hearing.

11. [15-13222](#)-A-13 TOMASA AVILA MOTION TO DISMISS CASE
MHM-1 10-2-15 [[25](#)]
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). 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 required tax returns (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).

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

The debtor has not filed credit counseling certificates. See *id.* § 109(h)(1).

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.

12.	14-14125 -A-13	MARTIN CALDERON AND	MOTION TO DISMISS CASE
	MHM-3	MERCEDES PINEDA	9-10-15 [73]
	MICHAEL MEYER/MV		
	DAVID JENKINS/Atty. for dbt.		
	JOINT DEBTOR DISMISSED		

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 \$1594.06.

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. Payments are delinquent in the amount of \$1594.06. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

13. [15-12329](#)-A-13 ANITA BARLOW
BDB-1
ANITA BARLOW/MV

MOTION TO VALUE COLLATERAL OF
EDUCATIONAL EMPLOYEES CREDIT
UNION
9-14-15 [[40](#)]

BENNY BARCO/Atty. for dbt.

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)(6). 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.

14. [10-62631](#)-A-13 NORBERT SOUSA DUARTE SL-3
NORBERT SOUSA DUARTE/MV
SCOTT LYONS/Atty. for dbt.
DISMISSED
- MOTION TO VACATE DISMISSAL OF CASE
9-25-15 [[92](#)]

No tentative ruling.

15. [12-11831](#)-A-13 LYDIA CLARY MHM-4
MICHAEL MEYER/MV
JEFFREY ROWE/Atty. for dbt.
- MOTION TO DISMISS CASE
9-4-15 [[145](#)]

Final Ruling

The motion withdrawn, the matter is dropped from calendar as moot.

16. [14-16131](#)-A-13 CHARLTON/LAURA PROSSER RS-4
CHARLTON PROSSER/MV
RICHARD STURDEVANT/Atty. for dbt.
- MOTION TO CONFIRM PLAN
9-10-15 [[63](#)]

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 debtor's counsel using Form EDC 3-081 and signed by the trustee

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.

17. [12-16432](#)-A-13 WILLIAM KNIGHT MOTION TO DISMISS CASE
MHM-1 9-8-15 [[60](#)]
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [13-17835](#)-A-13 GERALD/SANDRA CARTER MOTION TO DISMISS CASE
MHM-1 9-9-15 [[43](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [15-10240](#)-A-13 JOHN/ROBERTA CARTER MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY
HSBC BANK USA, NATIONAL 9-17-15 [[47](#)]
ASSOCIATION/MV
CHRISTIAN YOUNGER/Atty. for dbt.
BONNI MANTOVANI/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

20. [14-11944](#)-A-13 FORTUNATO/KATHERINE MOTION TO DISMISS CASE
MHM-1 MORALES 9-9-15 [[42](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [12-12146](#)-A-13 MANUEL/EDUVIJES INONG MOTION TO DISMISS CASE
MHM-1 9-8-15 [[37](#)]
MICHAEL MEYER/MV
STEPHEN LABIAK/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

22. [12-16046](#)-A-13 ERNEST/KATHERINE SHELTON MOTION TO DISMISS CASE
MHM-1 9-8-15 [[109](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [12-12650](#)-A-13 ROBERT/MONICA OLIVEIRA MOTION TO DISMISS CASE
MHM-2 9-8-15 [[45](#)]
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWAL

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [15-13151](#)-A-13 PAUL/CARRIE COLVIN
MHM-1
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-23-15 [[20](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [15-13153](#)-A-13 BRYAN FRANKS AND LISA
MHM-1 HILL-FRANKS

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
9-21-15 [[17](#)]

DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

26. [11-13056](#)-A-13 RAYMOND/YOLANDA DURAN
PLF-2

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
9-24-15 [[47](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Law Group, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2088.00 and reimbursement of expenses in the amount of \$128.29. There were no prior fee applications as the applicant had opted for the no-look fee of \$3500 pursuant to the court's local rules.

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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2088.00 and reimbursement of expenses in the amount of \$128.29. The aggregate allowed amount equals \$2217.28, and this amount is in addition to the no-look fee of \$3500 that was approved as part of plan confirmation. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2217.28 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.

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.

27. [11-17662](#)-A-13 FABIAN/JAN SANCHEZ
MHM-2
MICHAEL MEYER/MV
JOSEPH ARNOLD/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-3-15 [[102](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [15-12763](#)-A-13 FRANK MOOSIOS
DRJ-1
LOUIS MOOSIOS/MV

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LOUIS
MOOSIOS
9-1-15 [[28](#)]

TRUDI MANFREDO/Atty. for dbt.
DAVID JENKINS/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The hearing is continued pursuant to Stipulation and Order to November 19, 2015, at 9:00 a.m.

29. [13-13665](#)-A-13 HENRY/ARLENE LARA
BCS-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FISHMAN, LARSEN &
CALLISTER FOR BENJAMIN C.
SHEIN, DEBTORS ATTORNEY(S)
9-16-15 [[49](#)]

BENJAMIN SHEIN/Atty. for dbt.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fishman, Larsen & Callister has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$4,072.50 and reimbursement of expenses in the amount of \$414.00.

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.

Fishman, Larsen & Callister'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 \$4072.50 and reimbursement of expenses in the amount of \$414.00. The aggregate allowed amount equals \$4486.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4486.00 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.

30. [15-12465](#)-A-13 MARIA DE LA MORA
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
8-31-15 [[14](#)]

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 \$260.00 as of August 31, 2015.

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.

31. [15-12666](#)-A-13 JEFFREY MOOSOLIAN MOTION TO DISMISS CASE
MHM-1 9-23-15 [[24](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

32. [12-13768](#)-A-13 JOHN/ONEIDA AZEVEDO MOTION TO DISMISS CASE
MHM-1 9-8-15 [[42](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

33. [13-16468](#)-A-13 SAM/DONNA BOGDANOVICH MOTION TO DISMISS CASE
MHM-1 9-8-15 [[22](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWAL

Final Ruling

The motion withdrawn, the matter is dropped as moot.

34. [10-65069](#)-A-13 LIDIA CONTRERAS MOTION TO DISMISS CASE
MHM-1 9-3-15 [[86](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

35. [15-12169](#)-A-13 MIRIAM GONZALEZ OBJECTION TO DEBTOR'S CLAIM OF
MHM-3 EXEMPTIONS
MICHAEL MEYER/MV 9-4-15 [[45](#)]
STEVEN ALPERT/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

36. [15-12169](#)-A-13 MIRIAM GONZALEZ MOTION TO CONFIRM PLAN
PLG-1 9-4-15 [[39](#)]
MIRIAM GONZALEZ/MV
STEVEN ALPERT/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

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.

37. [15-12669](#)-A-13 BECKY BARNES CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 9-3-15 [[17](#)]
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

38. [15-11971](#)-A-13 JOHN SCOTT MOTION TO DISMISS CASE
MHM-2 8-31-15 [[29](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
DISMISSED

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [15-12675](#)-A-13 CARLOS/TAMMIE COSTALES OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
9-21-15 [[21](#)]
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

40. [15-12675](#)-A-13 CARLOS/TAMMIE COSTALES
PBB-1
CARLOS COSTALES/MV
PETER BUNTING/Atty. for dbt.

MOTION TO AVOID LIEN OF KINGS
CREDIT SERVICES, A CORPORATION
9-22-15 [[24](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

The responding party'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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

41. [15-12675](#)-A-13 CARLOS/TAMMIE COSTALES
PBB-2
CARLOS COSTALES/MV
PETER BUNTING/Atty. for dbt.

MOTION TO AVOID LIEN OF KINGS
CREDIT SERVICES, A CORPORATION
9-22-15 [[30](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

The responding party'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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

42. [14-12777](#)-A-13 RAY/SANDY TOLLISON
MHM-2
MICHAEL MEYER/MV
URSULA BARRIOS/Atty. for dbt.

MOTION TO DISMISS CASE
9-10-15 [[50](#)]

No tentative ruling.

43. [15-13077](#)-A-13 ANTONIO/MARIA ROMERO
SL-1
ANTONIO ROMERO/MV

SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

AMENDED MOTION TO VALUE
COLLATERAL OF THE CITY OF
CORCORAN
9-25-15 [[20](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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 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 strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 2119 Lorina Ave., Corcoran, CA.

The court values the collateral at \$96,574. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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 real 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 real property collateral located at 2119 Lorina Ave., Corcoran, CA, has a value of \$96,574. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

44. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED MOTION FOR RELIEF
GEG-10 FROM AUTOMATIC STAY
WAYNE STORMS/MV 8-13-15 [[360](#)]
SCOTT LYONS/Atty. for dbt.
GLEN GATES/Atty. for mv.
RESPONSIVE PLEADING,
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

45. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED MOTION TO DISBURSE
SL-6 FUNDS AS ADEQUATE PROTECTION
LINDSAY LEMONS/MV UNDER 11 U.S.C. 1326
8-26-15 [[372](#)]
SCOTT LYONS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

46. [11-17782](#)-A-13 RAMIL/MARIZA DAVID CONTINUED MOTION TO DISMISS
MHM-2 CASE
MICHAEL MEYER/MV 7-8-15 [[57](#)]
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

47. [11-17782](#)-A-13 RAMIL/MARIZA DAVID MOTION TO DISMISS CASE
MHM-3 8-24-15 [[64](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2400.

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. Payments are delinquent in the amount of \$2400. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

48. [11-62783](#)-A-13 BENIGNO MARMOLEJO ALCALA MOTION TO DISMISS CASE
MHM-3 AND ISABEL VALLADARES DE 9-3-15 [[95](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

49. [14-11683](#)-A-13 JOSE SANCHEZ MOTION FOR RELIEF FROM
BHT-1 AUTOMATIC STAY
KERN SCHOOLS FEDERAL CREDIT 8-19-15 [[44](#)]
UNION/MV
NEIL SCHWARTZ/Atty. for dbt.
BRIAN TRAN/Atty. for mv.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

50. [14-11683](#)-A-13 JOSE SANCHEZ MOTION TO DISMISS CASE
MHM-2 10-6-15 [[58](#)]
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

51. [15-12984](#)-A-13 DEBBIE/ROY BISHOP OBJECTION TO CONFIRMATION OF
MDE-1 PLAN BY TOYOTA MOTOR CREDIT
TOYOTA MOTOR CREDIT CORPORATION
CORPORATION/MV 8-31-15 [[21](#)]
MARK ESTLE/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the objection is overruled as moot.

52. [15-12984](#)-A-13 DEBBIE/ROY BISHOP MOTION TO DISMISS CASE
MHM-1 9-23-15 [[30](#)]
MICHAEL MEYER/MV
DISMISSED

Final Ruling

The case dismissed, the matter is denied as moot.

53. [15-13184](#)-A-13 DEBBY RENNA MOTION TO CONFIRM PLAN
FJG-2 9-3-15 [[22](#)]
DEBBY RENNA/MV
F. GIST/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

CONFIRMATION

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

75 DAY ORDER

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).

54. [14-12485](#)-A-13 FREDDIE/TERESITA MOTION TO DISMISS CASE
MHM-1 LEONGUERRERO 9-9-15 [[41](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

55. [15-12685](#)-A-13 JAMES CULVER MOTION TO DISMISS CASE
MHM-1 8-31-15 [[58](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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 \$1900 as of August 31, 2015.

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.

56. [15-12685](#)-A-13 JAMES CULVER
PBB-2
JAMES CULVER/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
8-3-15 [[42](#)]

Final Ruling

The case has been dismissed. The court will deny the motion as moot.

57. [15-13086](#)-A-13 CHARLES KEELE
RWR-1
TULARE COUNTY TAX COLLECTOR/MV

SCOTT LYONS/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY TULARE COUNTY TAX
COLLECTOR
9-22-15 [[22](#)]

No tentative ruling.

58. [15-13388](#)-A-13 TONYA STRANE

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-1-15 [[28](#)]

Tentative Ruling

If the \$79 installment due September 28, 2015, has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

59. [15-13388](#)-A-13 TONYA STRANE

NOTICE OF INTENT TO DISMISS
CASE
8-27-15 [[3](#)]

Final Ruling

Matter: Notice of Intent to Dismiss with Prejudice and Enjoining
Future Serial Filings

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).

The court has the authority to preclude serial, abusive bankruptcy filings. A number of remedies exist to redress such abuses: (1) dismissal with prejudice that bars the subsequent discharge of existing, dischargeable debt in the case to be dismissed, 11 U.S.C. § 349(a); (2) dismissal with prejudice that bars future petitions from being filed or an injunction against future filings, 11 U.S.C. §§ 105(a), 349(a); *see also Kistler v. Johnson*, No. 07-2257, 2008 WL 483605 (Bankr. E.D. Cal. Feb. 15, 2008) (McManus, J.) (unpublished decision). These provisions and remedies complement each other and are cumulative. *See In re Casse*, 198 F.3d. 327, 337-41 (2d Cir. 1999).

In cases where cause is found under § 349(a), a filing bar may exceed the 180-day limit described in § 109(g). *See, e.g., id.* at 341; *In re Tomlin*, 105 F.3d 933 (4th Cir. 1997). *But see In re Frieouf*, 938 F.2d 1099, 1103-04 (10th Cir. 1991). In *Leavitt*, the Ninth Circuit B.A.P. noted that § 349 was intended to authorize courts to control abusive filings, notwithstanding the limits of § 109(g). *See In re Leavitt*, 209 B.R. 935, 942 (B.A.P. 9th Cir. 1997).

Section 349(a) invokes a "cause" standard. In *Leavitt*, the panel held that "egregious" conduct must be present to find "cause" under § 349, but "a finding of bad faith constitutes such egregiousness." *Id.* at 939 (upholding the bankruptcy court's decision that debtors' inequitable proposal of Chapter 13 plan merely to avoid an adverse state court judgment was an unfair manipulation of the Code). In this

circuit, a finding of bad faith is sufficient "cause" for barring future filings pursuant to § 349(a). *Id.* at 939. The overall test used to determine bad faith is to consider the totality of the circumstances. See, e.g., *In re Leavitt*, 209 B.R. at 939; *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). In determining whether bad faith exists, "[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed [a plan] in an inequitable manner." *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

The court concludes that a filing bar may be ordered pursuant to § 349 if the appropriate objective factors are found. The court may find cause to bar a debtor from re-filing if the debtor: (1) acted inequitably in filing a case or proposing a plan, (2) misrepresented the facts, (3) unfairly manipulated the Code, or (4) proposed a plan in an inequitable manner. These factors are disjunctive.

The facts show debtor has unfairly manipulated the Code without genuine intent to prosecute the debtor's cases to discharge or reorganization. The debtor filed case no. 14-15102 in 2014 and that case was dismissed. The motion to dismiss reveals that the reasons for requesting dismissal were unreasonable delay prejudicial to creditors, failure to appear at the scheduled § 341 meeting, failure to provide the trustee with documentation, failure to provide credit counseling certificates, failure to file complete and accurate schedules and statements, and failure to file a complete plan (there was no plan term, no amount for the monthly payment, no percentage to be paid to unsecured creditors, no provision for claims). The debtor filed case no. 15-12464 in 2015 and that case was dismissed for failure to timely file documents.

The current case heads toward a similar ending as the prior cases. In the present case, case no. 15-13388, the debtor has filed a petition that fails to disclose the two 2014 cases filed by the debtor, case nos. 14-15102 and 14-11855. The petition is a "skeletal petition" without any schedules or the Statement of Financial Affairs. No plan has been filed even though this is a chapter 13 case. An order to show cause regarding dismissal of the case is pending for failure to pay the first installment of the filing fee. And the debtor did not appear at the § 341 meeting of creditors.

Based on the undisputed facts, the court finds cause to impose a filing bar equal to the 180-day limit in § 109(g).

The case will be dismissed with prejudice. The debtor will be enjoined from filing another bankruptcy petition in the Eastern District of California without leave of court for a 180-day period commencing on the entry of the order dismissing the debtor's bankruptcy case. During such time, leave of court will not be granted to file a petition unless the following conditions have been met: (1) the request for leave of court to file a petition is accompanied by a cashier's check made payable to the Clerk of Court for the full amount of the filing fee and documents that include the completed schedules and statements prepared and ready to be filed, (2) reasonable assurances are provided that debtor will appear at the § 341 meeting, and (3) the debtor shows a material change in circumstances that warrant the filing of a subsequent petition.

60. [11-14289](#)-A-13 BRENDA OLIVER
MHM-2
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-3-15 [[45](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

61. [15-12996](#)-A-13 NIGEL MARIN
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
9-23-15 [[34](#)]

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 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 required tax returns (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).

The debtor has failed to commence making timely plan payments under § 1326. *Id.* § 1307(c)(4). The plan provides for a \$238 monthly payment. Section 1326(a) requires the debtor to commence making payments not later than 30 days after the date of the filing of the plan in an amount proposed by the plan. 11 U.S.C. § 1326(a)(1). LBR 3015-1(f)(1) also provides that plan payments are due on the 25th of each month beginning the month after the order for relief. This case was filed on July 29, 2015, so monthly payments were due on August 25, 2015 and September 25, 2015, (and another payment will be due October 25, 2015). The trustee offers evidence that the debtor has failed to commence making plan payments as required by the Code.

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.

62. [13-14607](#)-A-13 GILBERT PEREZ
MHM-3
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

RESCHEDULED MOTION TO DISMISS
CASE
8-20-15 [[66](#)]

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 \$687.42, and this has been updated by Sarah Velasco's declaration dated October 2, 2015.

The debtor has filed declarations in opposition. But the supplemental declaration of the debtor impliedly admits that a default still exists in that it asks for additional time to cure. Further, the debtor's supplemental declaration states that only 3 payments have been made since the filing of the motion to dismiss, each in the amount of \$343.71. However, when the motion was filed, a delinquency of \$687.42 existed, which equals 2 payments, and the motion sought dismissal if the debtor did not make all payments coming due between the motion's filing and the hearing date as well as the outstanding delinquency on the date of the motion's filing.

Two \$343.71 payments came due between the motion's filing and hearing dates. Thus, to avoid dismissal, the debtor was required to make 4 payments of \$343.71. The supplemental declaration filed by the debtor shows that only 3 payments of this amount have been made since the motion was filed.

Therefore, 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 \$343.71. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

63. [15-13058](#)-A-13 JUAN/VERONICA LOPEZ
TOG-1
JUAN LOPEZ/MV

CONTINUED MOTION TO VALUE
COLLATERAL OF BANK OF AMERICA,
N.A.
8-31-15 [[15](#)]

THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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 strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the

value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 4342 W. Avalon Ave., Fresno, CA.

The court values the collateral at \$138,978. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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 real 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 real property collateral located at 4342 W. Avalon Ave., Fresno, CA, has a value of \$138,978. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

64. [10-64628](#)-A-13 STEVEN/MARY FULMER
THA-3

RESCHEDULED HEARING RE: MOTION
FOR COMPENSATION FOR THOMAS H.
ARMSTRONG, DEBTORS ATTORNEY(S)
9-4-15 [[217](#)]

THOMAS ARMSTRONG/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, Thomas H. Armstrong, Esq. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1500.00 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 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.

Thomas H. Armstrong, Esq.'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 \$1500.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$1500.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1500.00 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.

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.

65. 14-16131 -A-13 CHARLTON/LAURA PROSSER MHM-2 MICHAEL MEYER/MV	CONTINUED MOTION TO DISMISS CASE 8-5-15 [55]
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RICHARD STURDEVANT/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion was brought for unreasonable delay in confirming a chapter 13 plan. The plan has been confirmed. The motion will be denied as moot.