

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY:** THURSDAY  
**DATE:** NOVEMBER 10, 2016  
**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 CASES

**GENERAL DESIGNATIONS**

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

**ORAL ARGUMENT**

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

**COURT'S ERRORS IN FINAL RULINGS**

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

1. [16-12101](#)-A-13 RAUL GUTIERREZ  
MHM-2  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
9-19-16 [[49](#)]

**No tentative ruling.**

2. [16-13101](#)-A-13 NANCY MCFADIN  
  
SCOTT LYONS/Atty. for dbt.

CONTINUED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
9-30-16 [[19](#)]

**Tentative Ruling**

If the installment payment of \$77 due October 25, 2016, has not been paid by the time of the hearing or an In Forma Pauperis Order signed, the case may be dismissed without further notice or hearing.

3. [13-17007](#)-A-13 DANNY/LORI CARRELL  
GMA-5  
DANNY CARRELL/MV  
GEOFFREY ADALIAN/Atty. for dbt.

MOTION TO MODIFY PLAN  
9-28-16 [[136](#)]

**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.

4. [16-13015](#)-A-13 BARBARA LOPEZ POSADA ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-24-16 [[43](#)]

SCOTT LYONS/Atty. for dbt.

### **Tentative Ruling**

If the installment payment of \$77 due October 17, 2016, has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

5. [15-10019](#)-A-13 MICHAEL/NATALIE FAGUNDES MOTION FOR COMPENSATION BY THE  
FW-1 LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL,  
DEBTORS ATTORNEY(S)  
10-12-16 [[58](#)]

PETER FEAR/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, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$10,228.50 and reimbursement of expenses in the amount of \$403.96.

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.

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$10,228.50 and reimbursement of expenses in the amount of \$403.96. The aggregate allowed amount equals \$10,632.46. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$10,632.46 shall be allowed as an administrative expense to be paid through the plan.

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

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

6. [16-13220](#)-A-13 GEORGE BONANNO  
MHM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
10-17-16 [[17](#)]

MICHAEL ARNOLD/Atty. for dbt.

### **Final Ruling**

An amended plan has been filed. The objection is dropped as moot.

7. [11-18826](#)-A-13 ARMANDO/DIANE GARZA  
GH-3  
ARMANDO GARZA/MV  
GARY HUSS/Atty. for dbt.

MOTION FOR OMNIBUS RELIEF UPON  
DEATH OF DEBTOR  
9-26-16 [[86](#)]

### **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).

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

The debtor named in the motion has died. Rule 1016 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 Rules 1001-1(f) and 1016-1(b), the court will grant the motion.

The court will authorize further administration of this case as to the deceased debtor, and waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

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

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. Plan payments have been completed. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. And the court finds the continued administration of the estate is possible and in the best interests of the parties. The court substitutes joint debtor Diane A. Garza in the

place of the deceased debtor as the deceased debtor's representative or successor."

8. [16-12327](#)-A-13 GUSTAVO IBARRA MOTION TO CONFIRM PLAN  
TOG-1 9-27-16 [[39](#)]  
GUSTAVO IBARRA/MV  
THOMAS GILLIS/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

9. [15-14730](#)-A-13 PATRICIA SIMONIAN MOTION FOR COMPENSATION BY THE  
FW-1 LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL,  
DEBTORS ATTORNEY(S)  
10-3-16 [[27](#)]

GABRIEL WADDELL/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, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$4117.00 and reimbursement of expenses in the amount of \$319.32.

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.

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$4117.00 and reimbursement of expenses in the amount of \$319.32. The aggregate allowed amount equals \$4436.32. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4436.32 shall be allowed as an administrative expense to be paid through the plan.

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.

10. [16-12930](#)-A-13 MOISES/SARA DUENAS CONTINUED MOTION TO DISMISS  
MHM-1 CASE  
MICHAEL MEYER/MV 9-29-16 [[29](#)]  
THOMAS GILLIS/Atty. for dbt.

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

11. [16-10434](#)-A-13 JOSE ANGULO CONTINUED ORDER TO APPEAR RE:  
FEC-1 VOLUNTARY PETITION  
9-29-16 [[66](#)]  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

Having called this matter to the parties' attention and no party in interest having requested affirmative relief, the matter is dropped from calendar and the court will take no further action on the matter at this time. Aggrieved parties may present such requests for relief as are appropriate, if any.

12. [16-12836](#)-A-13 JOHN/NANCY ALVA MOTION TO VALUE COLLATERAL OF  
TCS-2 CONSUMER PORTFOLIO SERVICES  
JOHN ALVA/MV 10-4-16 [[21](#)]  
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 real property collateral that is the moving party's principal residence. 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.

13. [16-12836](#)-A-13 JOHN/NANCY ALVA MOTION TO VALUE COLLATERAL OF  
TCS-3 WHEELS FINANCIAL GROUP, LLC  
JOHN ALVA/MV 10-4-16 [[25](#)]  
TIMOTHY SPRINGER/Atty. for dbt.  
ECF ORDER #30

**Final Ruling**

The motion resolved by stipulation and order, the matter is dropped as moot.

14. [16-12836](#)-A-13 JOHN/NANCY ALVA MOTION TO VALUE COLLATERAL OF  
TSC-1 WILSHIRE CONSUMER CREDIT, LLC  
JOHN ALVA/MV 10-4-16 [[17](#)]  
TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Civil minute order

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

**VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by alien on property in which the estate has an interest . . . is a secured claim to the extent of the

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2001 Ford Escape. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$1074.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2001 Ford Escape has a value of \$1074. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1074 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.

15. [16-13036](#)-A-13 JOSE/KATRINA INZUNZA  
PBB-1  
JOSE INZUNZA/MV  
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
AMERICAN FIRST FINANCE  
10-10-16 [[23](#)]

### **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 wheel and tire package. 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 \$1500.

### **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 wheel and tire package has a value of \$1500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1500 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.

16. [16-13036](#)-A-13 JOSE/KATRINA INZUNZA MOTION TO VALUE COLLATERAL OF  
PBB-2 FRESNO COUNTY FEDERAL CREDIT  
JOSE INZUNZA/MV UNION  
10-10-16 [\[17\]](#)  
PETER BUNTING/Atty. for dbt.

### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **VALUATION OF COLLATERAL**

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2012 Hyundai Sonata. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$12,134.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2012 Hyundai Sonata has a value of \$12,134. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$12,134 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.

17. <a href="#">16-13036</a> -A-13 JOSE/KATRINA INZUNZA PBB-3 JOSE INZUNZA/MV  PETER BUNTING/Atty. for dbt.	MOTION TO VALUE COLLATERAL OF WELLS FARGO FINANCIAL NATIONAL BANK 10-10-16 [ <a href="#">29</a> ]
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#### **Final Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

Service of the motion was insufficient. Two proofs of service appear on the docket. The court will only consider the corrected proof of service. Corrected Proof of Service, ECF No. 37. The court presumes the corrected proof supersedes the original proof. On the corrected proof of service, service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h) (1)-(3).

18. [16-12740](#)-A-13 BRUCE/DANIELLE CAMPBELL      OBJECTION TO DEBTOR'S CLAIM OF  
MHM-1      EXEMPTIONS  
MICHAEL MEYER/MV      10-3-16 [[19](#)]  
JEFFREY ROWE/Atty. for dbt.

**Final Ruling**

The objection is overruled as moot given the filing of an amended Schedule C as of October 4, 2016.

19. [16-10847](#)-A-13 STANLEY/LINDA MORGAN      CONTINUED MOTION TO DISMISS  
MHM-1      CASE  
MICHAEL MEYER/MV      9-7-16 [[40](#)]  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

The motion to dismiss is dropped from calendar given the court's ruling on the debtors' motion to value collateral of Synchrony Bank.

20. [16-10847](#)-A-13 STANLEY/LINDA MORGAN      MOTION TO VALUE COLLATERAL OF  
PK-4      SYNCHRONY BANK  
STANLEY MORGAN/MV      10-13-16 [[59](#)]  
PATRICK KAVANAGH/Atty. for dbt.

**Final Ruling**

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

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

**Disposition:** Granted

**Order:** Civil minute order

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

**VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind

considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of personal property described as 2014 Sleep Number Bed. 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 \$500.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value 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 2014 Sleep Number Bed has a value of \$500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$500 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

21. [16-13249](#)-A-13 MARK SNYDER  
MHM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
10-17-16 [[13](#)]

TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

#### **Final Ruling**

The objection withdrawn, the matter is dropped as moot.

22. [13-17754](#)-A-13 EDUARDO SOLIS AND ROSA MOTION FOR COMPENSATION BY THE  
FW-3 CASTILLO LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL,  
DEBTORS ATTORNEY(S)  
10-13-16 [[95](#)]

GABRIEL WADDELL/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, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2299.50 and reimbursement of expenses in the amount of \$224.38.

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.

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$2299.50 and



reimbursement of expenses in the amount of \$224.38. The aggregate allowed amount equals \$2523.88. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2523.88 shall be allowed as an administrative expense to be paid through the plan.

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.

23. [16-13054](#)-A-13 ABEL/ANA CARRANZA  
MHM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
10-17-16 [[21](#)]

MARK ZIMMERMAN/Atty. for dbt.

**No tentative ruling.**

24. [16-13156](#)-A-13 IGNACIO/CONSUELO  
APN-1 AGUACALIENTE  
GATEWAY ONE LENDING AND  
FINANCE/MV  
THOMAS GILLIS/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY GATEWAY ONE LENDING AND  
FINANCE  
9-27-16 [[13](#)]

**No tentative ruling.**

25. [16-13156](#)-A-13 IGNACIO/CONSUELO  
MHM-1 AGUACALIENTE

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
10-17-16 [[18](#)]

THOMAS GILLIS/Atty. for dbt.

**Final Ruling**

The objection withdrawn, the matter is dropped as moot.

26. [16-11261](#)-A-13 CHRISTOPHER/CHANDA WEEMS MOTION FOR RELIEF FROM  
KR-1 AUTOMATIC STAY  
LBS FINANCIAL CREDIT UNION/MV 10-20-16 [[47](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
KAREL ROCHA/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2015 Dodge Challenger

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 2 postpetition payments are past due. The total past due balance of principal and interest is approximately \$1949.93.

Under § 362(d) (2) (A), there is no equity in the vehicle, and the plan, not yet confirmed, proposes to surrender the vehicle to the secured creditor. Thus, the vehicle is not necessary to an effective reorganization. § 362(d) (2) (B).

Additionally, the value of the vehicle is depreciating and continues to depreciate. Thus, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a) (1) (C) (requiring adequate protection payments to commence not later than 30 days after the petition as to any creditor secured by personal property). 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.

27. [15-10764](#)-A-13 JUAN DIAZ  
FW-2

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL,  
DEBTORS ATTORNEY(S)  
10-13-16 [[44](#)]

PETER FEAR/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, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3941.00 and reimbursement of expenses in the amount of \$479.97.

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.

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3941.00 and

reimbursement of expenses in the amount of \$479.97. The aggregate allowed amount equals \$4420.97. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4420.97 shall be allowed as an administrative expense to be paid through the plan.

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.

28. [16-10269](#)-A-13 ROBERT/JENNIFER SALAS MOTION TO DISMISS CASE  
MHM-1 10-5-16 [[72](#)]  
MICHAEL MEYER/MV  
SUSAN HEMB/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 \$4940.12.

### **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.

29. [16-11475](#)-A-13 DAVID ALANIS  
CGF-4  
DAVID ALANIS/MV  
CHRISTOPHER FISHER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
9-30-16 [[61](#)]

**No tentative ruling.**

30. [16-11475](#)-A-13 DAVID ALANIS  
CGF-5  
DAVID ALANIS/MV  
  
CHRISTOPHER FISHER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
FRESNO COUNTY EMPLOYEES FEDERAL  
CREDIT UNION  
10-5-16 [[67](#)]

**Tentative 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.

Additionally, the motion is not supported by competent evidence as required in the Local Rules. LBR 9014-1(d)(7).

31. [16-11475](#)-A-13 DAVID ALANIS CONTINUED MOTION TO DISMISS  
MHM-1 CASE  
MICHAEL MEYER/MV 9-7-16 [[55](#)]  
CHRISTOPHER FISHER/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

32. [16-11885](#)-A-12 ANTONIO/MARIA TEIXEIRA CONTINUED MOTION TO CONFIRM  
FW-3 CHAPTER 12 PLAN  
MARIA TEIXEIRA/MV 8-31-16 [[26](#)]  
PETER FEAR/Atty. for dbt.

**No tentative ruling.**

33. [16-12192](#)-A-13 ROBIN BLAKE ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
JERRY LOWE/Atty. for dbt. 10-24-16 [[55](#)]

**Tentative Ruling**

If the final installment payment of \$77 due October 18, 2016, has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

34. [12-17896](#)-A-13 BRIAN/LINDA RIDDLE OPPOSITION/OBJECTION, OBJECTION  
MHM-1 TO CLAIM OF US BANK N.A., CLAIM  
MICHAEL MEYER/MV NUMBER 5  
PETER BUNTING/Atty. for dbt. 9-27-16 [[44](#)]

**Final Ruling**

**Objection:** Objection to Withdrawal of Claim and Objection to Allowance of Claim No. 5

**Notice:** LBR 9014-1(f)(1) / LBR 3007-1(b)(1); written opposition required

**Disposition:** Sustained

**Order:** Prepared by the trustee

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).

For the reasons stated in the objection, the court will sustain the objection to the withdrawal of Claim No. 5. The claim is hereby deemed not withdrawn because the creditor, who participated significantly in this case, did not obtain an order of the court after a hearing authorizing such withdrawal. See Fed. R. Bankr. P. 3006.

In addition, the court will sustain the objection to the claim in the amount of \$0.00 and allow the claim in the amount of \$21,713.88, including principal of \$20,163.01 and interest of \$1550.87, which is the amount that the trustee has paid on this claim. By returning funds to the trustee and stating in writing that the account underlying the claim had been overpaid, the respondent creditor has waived any right to any additional amounts.

35. [16-13197](#)-A-13 BENJAMIN CASTILLO  
SAH-1  
BENJAMIN CASTILLO/MV  
SUSAN HEMB/Atty. for dbt.

MOTION TO AVOID LIEN OF  
MEDVETTA FINANCIAL, INC.  
9-21-16 [[13](#)]

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

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

use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

After review of the debtor's Schedule C filed in this case, Fed. R. Evid. 201, no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a prima facie case has not been made for relief under § 522(f).