

**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: NOVEMBER 30, 2017
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

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

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

1. [12-14304](#)-A-12 JOSE/MARIA MENDONCA
[FW-14](#)

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
10-25-17 [[178](#)]

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 12 case, Fear Waddell has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$60,695.00 and reimbursement of expenses in the amount of \$1,578.24. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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

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

CIVIL MINUTE ORDER

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

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

Fear Waddell'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 \$60,695.00 and reimbursement of expenses in the amount of \$1,578.24. The aggregate allowed amount equals \$62,273.24. As of the date of the application, the applicant held a retainer in the amount of \$18,633.72 (\$11,133.72 retainer + \$7,500.00 from Merced County settlement). The amount of \$43,639.52 shall be paid directly by the debtors to the applicant. The applicant is authorized to draw on any retainer held. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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

2. [16-14304](#)-A-13 TINA MORENO
[MJA-2](#)
TINA MORENO/MV
MICHAEL ARNOLD/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
10-16-17 [[78](#)]

No Ruling

3. [17-10408](#)-A-13 PHIL/TAMMY SMITH
[FW-4](#)

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
11-2-17 [[70](#)]

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 \$10,928.00 and reimbursement of expenses in the amount of \$670.79.

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 \$10,928.00 and reimbursement of expenses in the amount of \$670.79. The aggregate allowed amount equals \$11,598.79. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$11,598.79 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.

4. [17-13708](#)-A-13 NOE RODRIGUEZ AND ARACELI MOTION TO VALUE COLLATERAL OF
[TOG-1](#) HERNANDEZ TUCOEMAS FEDERAL CREDIT UNION
NOE RODRIGUEZ/MV 10-7-17 [[11](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: Written opposition filed by responding party

Disposition: Continued for evidentiary hearing

Order: Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. 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.

5. [17-13709](#)-A-13 CESAR CORTES AND NEREYDA TOG-1 OLEA MOTION TO VALUE COLLATERAL OF
CESAR CORTES/MV TUCOEMAS FEDERAL CREDIT UNION
THOMAS GILLIS/Atty. for dbt. 10-7-17 [[9](#)]
RESPONSIVE PLEADING

No Ruling

6. [17-12812](#)-A-13 ISRAEL ARREDONDO WSL-1 MOTION TO CONFIRM PLAN
ISRAEL ARREDONDO/MV 10-1-17 [[17](#)]
GREGORY SHANFELD/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.

7. [14-12313](#)-A-13 FRANK/JAMIE RODRIGUEZ BCS-4 MOTION FOR COMPENSATION FOR
BENJAMIN C. SHEIN, DEBTORS
ATTORNEY(S)
10-31-17 [[60](#)]

BENJAMIN SHEIN/Atty. for dbt.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Shein Law Group, PC has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3295.00 and reimbursement of expenses in the amount of \$390.14.

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

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

CIVIL MINUTE ORDER

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

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

Shein Law Group, PC'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 \$3295.00 and reimbursement of expenses in the amount of \$390.14. The aggregate allowed amount equals \$3685.14. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3685 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.

8. [17-13113](#)-A-13 FRANK/STEPHANIE HERNANDEZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-14-17 [[57](#)]

SCOTT LYONS/Atty. for dbt.

Final Ruling

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

9. [17-10116](#)-A-13 PAULA PARDO MOTION TO CONFIRM PLAN
[TOG](#)-2 10-6-17 [[55](#)]
PAULA PARDO/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.

10. [14-12917](#)-A-12 DJ DAIRY MOTION TO DISMISS CASE
[MHM](#)-1 10-25-17 [[46](#)]
DJ DAIRY/MV
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CHAPTER 12 DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1208(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 \$7,072.48. The debtor has filed a non-opposition to the motion. The court will grant the motion and dismiss the case.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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 12 plan in this case. Payments are delinquent in the amount of \$7,072.48. The court hereby dismisses this case.

11. [17-12320](#)-A-13 ROBERTO/VICKI GUTIERREZ CONTINUED MOTION TO VALUE
[TCS](#)-1 COLLATERAL OF ALLY FINANCIAL,
ROBERTO GUTIERREZ/MV INC.
9-14-17 [[45](#)]
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

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 opposition of the respondent has been withdrawn. No other opposition has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the

date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2013 Chevy Cruze LT. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$6500.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2013 Chevy Cruze LT has a value of \$6500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6500 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.

12. [17-12824](#)-A-13 RAFAEL/MARTHA HERNANDEZ MOTION FOR RELIEF FROM
[RWR](#)-1 AUTOMATIC STAY
NOBLE FEDERAL CREDIT UNION/MV 11-9-17 [[57](#)]
PETER BUNTING/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2011 Ford Explorer sport utility vehicle

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).

RELIEF FROM STAY

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 4 postpetition payments are past due. The total past due balance of principal and interest is approximately \$1472.

Alternatively, because the plan, which has not been confirmed, provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.''

CIVIL MINUTE ORDER

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

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

Noble Federal Credit Union's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly

known as 2011 Ford Explorer sport utility vehicle, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

13. [17-13628](#)-A-13 HONG MOUA MOTION TO DISMISS CASE
[MHM](#)-2 10-30-17 [[25](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [16-13241](#)-A-13 MONIQUE BOOKOUT CONTINUED MOTION TO MODIFY PLAN
[RSW](#)-4 6-29-17 [[54](#)]
MONIQUE BOOKOUT/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

OPPOSITION

The hearing on this matter has been continued twice to allow the debtor to finalize a loan modification agreement with the opposing creditor. At the last hearing on October 19, 2017, the court ordered that "not later than 7 days prior to the continued hearing, the debtor and the creditor will file a joint status report." Order, ECF No. 81.

The creditor has not filed a status report along with the debtor as ordered at the prior hearing.

The debtor represents in her status report that U.S. Bank National Association's objections to the modified plan have been withdrawn. In the absence of a status report or further objection by U.S. Bank, the court will grant the motion and overrule U.S. Bank's objections.

MODIFICATION

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.

15. [10-19042](#)-A-12 LUIS/MARIA SOTO MOTION TO DISMISS CASE
[MHM](#)-1 10-25-17 [[191](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.

No Ruling

16. [17-13747](#)-A-13 PATRICIA MALDONADO ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-3-17 [[15](#)]
THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

If the installments of \$79 due October 30, 2017, and \$77 due November 28, 2017, have not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

17. [17-11148](#)-A-13 PAUL/DARLENE HOLLAND MOTION TO CONFIRM PLAN
[WLG](#)-4 10-16-17 [[73](#)]
PAUL HOLLAND/MV
NICHOLAS WAJDA/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

18. [17-13649](#)-A-13 ANDREA SOUSA MOTION TO CONFIRM PLAN
[JRL](#)-1 10-16-17 [[16](#)]
ANDREA SOUSA/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The hearing on this motion to confirm will be continued to January 11, 2018, at 9:00 a.m. The trustee shall file a status report no later than 14 days in advance of the continued hearing.

19. [17-13649](#)-A-13 ANDREA SOUSA
[MHM](#)-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

MOTION TO DISMISS CASE
10-30-17 [[23](#)]

No Ruling

20. [17-12451](#)-A-13 DAVID/DELIA HAYES
[MHM](#)-2
MICHAEL MEYER/MV
RESPONSIVE PLEADING

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
10-3-17 [[52](#)]

Tentative Ruling

Objection: Objection to Claim of Exemptions

Notice: Continued hearing date; written opposition required

Disposition: Sustained

Order: Civil minute order

EXEMPTIONS IN BANKRUPTCY

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d).

"California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

Under California law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure ("special bankruptcy exemptions") or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under

section 703.140(b) ("regular non-bankruptcy exemptions"). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)-(3).

ANALYSIS

The trustee objects to the debtors' claim of exemption in both real and personal property. The debtors' have utilized the special bankruptcy exemptions under §703.140(b) of the California Code of Civil Procedure.

Exemption in Primary Residence

The trustee has objected to the debtors' exemption claim in their primary residence in the amount of \$305,107 under Cal. Civ. Proc. Code § 703.140(b)(J) [sic]. The trustee argues that an exemption under Cal. Civ. Proc. Code § 703.140(b)(J) does not exist. The trustee is correct. The debtors have not opposed the objection on this ground. Accordingly, the court sustains this objection and disallows this claim of exemption in the debtors' primary residence.

Exemption in Vehicles

The trustee also objects to the debtors' exemptions in various vehicles. Specifically, the trustee objects to the following exemption claims, which are all claimed exempt under Cal. Civ. Proc. Code § 703.140(b)(2):

1. An exemption in a 2015 Chrysler 200 in the amount of \$11,754
2. An exemption in a 2001 Infiniti QX4 in the amount of \$924
3. An exemption in a 2004 Pace Trailer in the amount of \$400

The debtors argue that the exemptions in vehicles do not exceed the statutory limit. They reference an Exhibit A in support showing a Best Interests of Creditors Test. But the best interests of creditors test (required for confirmation) is completely unrelated to the amount that may be claimed exempt under Cal. Civ. Proc. Code § 703.140(b).

The maximum exemption amount that may be claimed for vehicles is \$5,350. See Cal. Civ. Proc. Code §§ 703.140(b), 703.150. The amount for motor vehicles in § 703.140(b)(2) was adjusted upward pursuant to § 703.150(a) and (d) as of April 1, 2016. The current amount of the exemption is \$5,350 as the trustee contends.

The debtors' exemption claim in vehicles and a trailer exceeds the statutory limit by at least \$7,728. Moreover, a trailer is not a motor vehicle and cannot be claimed exempt under Cal. Civ. Proc. Code § 703.140(b)(2).

Therefore, the court sustains the objection. Although the debtors have the right to claim an exemption of \$5,350 in one or more motor vehicles, the court's role is not to allocate such a dollar-limited exemption among multiple vehicles that together exceed the statutory limit for the exemption.

Exemption in Retirement Stock

The trustee has not objected to an exemption in UPS retirement stock. The trustee merely states that "Trustee requests a copy of Debtor's profit sharing agreement with UPS in order to verify whether Debtor's UPS stock qualifies as retirement." The court is unclear which exemption this statement references. Schedule C contains several retirement-related exemption claims of \$0.00 in value. In any event, because an actual objection has not been raised, the court will not address this issue.

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 objection to the debtors' claim of exemptions has been presented to the court. Having considered the objection, the opposition, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained.

21. [17-11652](#)-A-13 GREGORY/ROUZANA TOROSSIAN MOTION TO CONFIRM PLAN
[MJA](#)-3 10-16-17 [[74](#)]
GREGORY TOROSSIAN/MV
MICHAEL ARNOLD/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.

22. [17-12453](#)-A-13 ROBERT/SALLY MALY CONTINUED OBJECTION TO DEBTOR'S
[MHM](#)-2 CLAIM OF EXEMPTIONS
MICHAEL MEYER/MV 10-3-17 [[42](#)]
JERRY LOWE/Atty. for dbt.

Tentative Ruling

The hearing on this objection to the debtors' claim of exemptions is consolidated with the hearing on the trustee's objection to the debtors' claim of exemptions at docket no. 54, which is the next matter on this calendar.

23. [17-12453](#)-A-13 ROBERT/SALLY MALY OBJECTION TO DEBTOR'S CLAIM OF
[MHM](#)-4 EXEMPTIONS
MICHAEL MEYER/MV 10-27-17 [[54](#)]
JERRY LOWE/Atty. for dbt.

No Ruling

24. [17-12360](#)-A-13 KEITH DAVIS MOTION TO MODIFY PLAN
[HDN](#)-2 10-16-17 [[43](#)]
KEITH DAVIS/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation on grounds that the plan reduces three Class 2 secured claims without obtaining favorable orders on motions to value such claims.

LBR 3015-1(j)

The plan proposes to reduce three Class 2 secured claims based on the value of the collateral. But the failure to file a motion to value such collateral that is granted before or in conjunction with the hearing on confirmation warrants denial of confirmation of the plan. LBR 3015-1(j); see also Ch. 13 Plan § 2.09(c).

FEASIBILITY

The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

One such element is feasibility. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Here, the debtor has not carried that burden. Statements of income and expenses, e.g., Schedules I and J, lose their presumptive effect 60 days after filing. In this case, the debtors most recent Schedules I and J were filed approximately 5 months prior the hearing on the motion. And as a consequence, the court affords them no weight. The debtor's declaration in support is too conclusory to support a finding of feasibility. Davis Decl. ¶ 6.

CIVIL MINUTE ORDER

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

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

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

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

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).

25. [17-12360](#)-A-13 KEITH DAVIS
[MHM](#)-2
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-1-17 [[51](#)]

Tentative Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

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).

EXEMPTIONS IN BANKRUPTCY

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d).

"California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

ANALYSIS

The trustee objects to the debtor's claim of exemption in various vehicles and trailers. The debtor exempts the following assets under C.C.P. § 703.140(b)(6):

1. 2008 Freightliner in the amount of \$2,000.00;
2. 2010 Freightliner in the amount of \$2,000.00;
3. 2007 Walbash Trailer in the amount of \$2,000.00;
4. 2008 Walbash Trailer in the amount of \$2,000.00; and
5. 2004 Great Dane Trailer in the amount of \$2,000.00.

These exemptions claimed under § 703.140(b)(6) total \$10,000.00. The current statutory limit in effect for § 703.140(b)(6) is \$8,000.00. See Cal. Civ. Proc. Code §§ 703.140(b)(6), 703.150(a), (d). Accordingly, the objection will be sustained.

CIVIL MINUTE ORDER

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

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

The trustee's objection to the debtor's claim of exemptions 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 objection,

IT IS ORDERED that the objection is sustained.

26. [17-13766](#)-A-13 MAHYANTIJ JOHNSON

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-3-17 [[29](#)]

DISMISSED

Final Ruling

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

27. [12-18270](#)-A-13 VIVENCIO/MARIETTA BANTA
[MAZ](#)-1
VIVENCIO BANTA/MV

MOTION FOR EXEMPTION FROM
FINANCIAL MANAGEMENT COURSE
AND/OR MOTION FOR SUCCESSOR TO
THE DECEASED , MOTION FOR
CONTINUED ADMINISTRATION OF A
CASE UNDER CHAPTER 13
10-26-17 [[44](#)]

MARK ZIMMERMAN/Atty. for dbt.

Tentative Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

Notice: LBR 9014-1(f) (2); no 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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

WAIVER OF § 1328 CERTIFICATIONS

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

CONTINUED ADMINISTRATION OF THE CASE

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

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

SUBSTITUTION OF THE PROPER PARTY

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

ORDER INSTRUCTIONS

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

28. [17-12677](#)-A-12 ANTONIO/MARIA TEIXEIRA MOTION TO AVOID LIEN OF A.L.
[FW-4](#) GILBERT COMPANY
ANTONIO TEIXEIRA/MV 10-31-17 [[39](#)]
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption in Real Property

Notice: Written opposition filed by responding party

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The motion seeks to avoid the responding party's lien on the moving party's real property. At the hearing on this matter, 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 issues of the real property's value and the amount of respondent's judicial lien 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.

29. [17-12677](#)-A-12 ANTONIO/MARIA TEIXEIRA
[FW-6](#)
ANTONIO TEIXEIRA/MV
PETER FEAR/Atty. for dbt.
- MOTION TO CONFIRM CHAPTER 12
PLAN
10-26-17 [[30](#)]

No Ruling

30. [17-12677](#)-A-12 ANTONIO/MARIA TEIXEIRA
[FW-7](#)
ANTONIO TEIXEIRA/MV

PETER FEAR/Atty. for dbt.
- MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ADRIANO TEIXEIRA
11-2-17 [[45](#)]

No Ruling

31. [12-60092](#)-A-13 GARY/CHRISTINA STAHL
[FW-2](#)

PETER FEAR/Atty. for dbt.
- MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
10-31-17 [[87](#)]

No Ruling

32. [13-15396](#)-A-13 GARY BLEILE
[MHM-1](#)
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.
- MOTION TO DISMISS CASE
10-11-17 [[28](#)]

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).

MATERIAL DEFAULT

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The confirmed plan will not complete in 60 months as required by the plan.

More specifically, § 1.03 of the confirmed plan provides that monthly plan payments will continue for 60 months, i.e., the plan's commitment period. The plan also requires that unsecured creditors receive no less than 100%. The trustee contends that the cause of the non-feasibility is due to an unsecured deficiency claim of Americredit Financial in the amount of \$12,663.34. Because of this claim, the balance of unsecured claims equals \$12,078.92 and the total amount needed to complete the plan is \$13,038.44 (with trustee's fees). Because only 11 monthly payments remain and the plan payment is currently \$192.78, the plan will not fund within 60 months. The plan payment must increase to \$1185.31 to fund in 60 months. Therefore, the plan is in material default and the case must be dismissed.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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 plan is in material default because it no longer funds within the plan's 60-month term. This default constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

33. [17-13498](#)-A-13 DUSTY/SONJA THOMAS
[APN](#)-1
FORD MOTOR CREDIT COMPANY/MV
SCOTT LYONS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-23-17 [[18](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Ford Fusion

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

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 1 postpetition payments are past due. The total past due balance of principal and interest is approximately \$539.54.

Alternatively, because the debtors have stated their intent to surrender possession of the vehicle, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.''

CIVIL MINUTE ORDER

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

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

Ford Motor Credit Company's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2016 Ford Fusion, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.