

**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: JANUARY 14, 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.

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. [10-63700](#)-A-13 JOSE/IRMA MALDONADO MOTION TO DISMISS CASE
MHM-6 11-13-15 [[130](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

2. [15-14300](#)-A-13 GRISELDA LOPEZ MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
U.S. BANK NATIONAL 11-30-15 [[17](#)]
ASSOCIATION/MV
KRISTIN ZILBERSTEIN/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

3. [15-14300](#)-A-13 GRISELDA LOPEZ MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
U.S. BANK NATIONAL 12-1-15 [[23](#)]
ASSOCIATION/MV
KRISTIN ZILBERSTEIN/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

4. [15-12203](#)-A-13 WILLIAM SEUELL MOTION TO DISMISS CASE
MHM-3 11-30-15 [[87](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [15-14906](#)-A-12 VICTOR/EVILA NAJERA MOTION TO EXTEND AUTOMATIC STAY
AOE-1 12-31-15 [[12](#)]
VICTOR NAJERA/MV
ANTHONY EGBASE/Atty. for dbt.

Tentative Ruling

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).

PROCEDURE

The proof of service has not been filed as a separate document. It was attached to each document filed other than the proof of service. This violates the court's local rules. LBR 9014-1(e)(3). In the future, the court may impose sanctions for such violations.

MERITS

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

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

6. [15-13410](#)-A-13 KIMBERLY SHACKELFORD MOTION TO DISMISS CASE
MHM-1 11-30-15 [[52](#)]
MICHAEL MEYER/MV
SUSAN HEMB/Atty. for dbt.

Final Ruling

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 \$3784.26.

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.

7. [15-14410](#)-A-13 JESSE LOPEZ
KEH-1
BALBOA THRIFT & LOAN/MV
JOEL WINTER/Atty. for dbt.
KEITH HERRON/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY BALBOA THRIFT & LOAN
12-22-15 [[24](#)]

No tentative ruling.

8. [12-10613](#)-A-13 STEVEN/TERESA FITTON
SL-1
TERESA FITTON/MV

MOTION FOR SUBSTITUTION AS THE
REPRESENTATIVE TO THE DECEASED
AND CONTINUED ADMINISTRATION OF
CASE UNDER CHAPTER 13
12-23-15 [[27](#)]

STEPHEN LABIAK/Atty. for dbt.

Tentative Ruling

Matter: Notice of Death and Motion for Substitution as the Representative to the Deceased and Continued Administration of Case under Chapter 13

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).

PROCEDURE

The exhibits to the motion do not comply with the court's local rules and the *Revised Guidelines for the Preparation of Documents*, Form EDC 2-901. LBR 9004-1(a); *Revised Guidelines* Section IV.A.

Additionally, the attorney filing the papers for this matter has not complied with Rule 9037. The attorney shall file an ex parte application to restrict public access to the pertinent filed documents under § 107(c)(1) and Rule 9037(c) or (d) no later than January 20, 2016. A redacted copy of any restricted, sealed documents will be filed to replace the documents restricted or sealed.

THE MOTION

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."

The court finds that further administration is possible and in the best interests of the debtor and creditors in this case as no creditor or party in interest has presented grounds for dismissing the case or denying the motion. 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 and allow continued administration of the case and substitute Teresa Fitton as the representative in the place of Steven Fitton.

INSTRUCTIONS FOR ORDER

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 finds that continued administration of the estate is possible and in the best interests of the parties. The court hereby substitutes Teresa Fitton as the representative for the deceased joint debtor Steven Fitton. IT IS FURTHER ORDERED that, no later than January 20, 2016, the debtor's attorney shall file an ex parte application to restrict public access to any documents filed that violate Rule 9037."

9. [11-14215](#)-A-13 JOSEPHINE BAKER
MHM-3
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
11-6-15 [[55](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [14-12915](#)-A-13 JEANETTE TENA MOTION TO DISMISS CASE
MHM-2 11-23-15 [[67](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to February 25, 2016, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c) (1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$2000 under both the original and the modified plan, for which an order confirming the plan has not yet been submitted.

The debtor has opposed stating that a modified plan has been filed in this case set to be heard on February 25, 2016, which will cure all delinquencies if approved. The hearing on the modification February 25, 2016.

The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to February 25, 2016, at 9:00 a.m.

11. [15-14415](#)-A-13 ROGELIO ALFARO ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
JERRY LOWE/Atty. for dbt. 12-18-15 [[28](#)]

Final Ruling

The fee paid, the order to show cause is discharged.

12. [15-14415](#)-A-13 ROGELIO ALFARO
JDS-1
LARISA MURREN/MV
JERRY LOWE/Atty. for dbt.
JOHN SUHR/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-4-15 [[20](#)]

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e), in which case the court will continue the hearing to February 11, 2016, at 9:00 a.m., and require that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing along with a notice of continued hearing under LBR 9014-1(f)(2)

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The debtor was not served with the motion.

13. [10-63817](#)-A-13 ANIRUDH SUD
MHM-3
MICHAEL MEYER/MV

HENRY NUNEZ/Atty. for dbt.
WITHDRAWN

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
12-15-15 [[137](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [15-14122](#)-A-13 BRIAN ALMANZA
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
12-1-15 [[21](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

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

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

CIVIL MINUTE ORDER

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

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

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

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

15.	15-10123 -A-13	CURTIS ALLEN AND	MOTION TO DISMISS CASE
	MHM-1	CHARLOTTE JACKSON	11-5-15 [23]
	MICHAEL MEYER/MV		
	VARDUHI PETROSYAN/Atty. for dbt.		

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$10,888.49.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$10,888.49. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

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| 16. 15-14230 -A-13 ALVARO HERNANDEZ AND
KEH-1 GISELLE MARTINEZ
BALBOA THRIFT AND LOAN/MV
PETER BUNTING/Atty. for dbt.
KEITH HERRON/Atty. for mv.
RESPONSIVE PLEADING | OBJECTION TO CONFIRMATION OF
PLAN BY BALBOA THRIFT AND LOAN
12-15-15 [27] |
|---|---|

No tentative ruling.

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| 17. 15-14230 -A-13 ALVARO HERNANDEZ AND
PBB-1 GISELLE MARTINEZ
ALVARO HERNANDEZ/MV
PETER BUNTING/Atty. for dbt. | MOTION TO VALUE COLLATERAL OF
BALBOA THRIFT AND LOAN
12-16-15 [32] |
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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. Although no opposition was filed to this motion, the court will deem the respondent creditor's objection to confirmation (docket control

no. KEH-1), which fairly raises a material issue as to the value of the subject collateral, as an opposition to the present motion.

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.

18. [10-65031](#)-A-13 EDWARD/ADELA MARTINEZ MOTION TO MODIFY PLAN
PLG-2 11-24-15 [[66](#)]
EDWARD MARTINEZ/MV
STEVEN ALPERT/Atty. for dbt.

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.

19. [15-14033](#)-A-13 JO PIERSON MOTION FOR RELIEF FROM
DVW-1 AUTOMATIC STAY
21ST MORTGAGE CORPORATION/MV 12-11-15 [[27](#)]
JAMES CONKEY/Atty. for dbt.
DIANE WEIFENBACH/Atty. for mv.

Tentative Ruling

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

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

Disposition: Granted

Order: Prepared by moving party

Subject: 3923 West Harold Court, Visalia, CA

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).

LEGAL STANDARDS

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

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1)

"the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

ANALYSIS

The debtor has defaulted on a loan from the moving party secured by the property described above, and both prepetition and postpetition payments are past due. The movant asserts that 13 prepetition and 2 postpetition payments are delinquent. The postpetition delinquency is in the amount of \$4882.24. Cause exists to grant relief from the stay as to the debtor under § 362(d)(1).

Given the lack of opposition filed by the debtor or co-debtor, relief from the co-debtor stay is warranted under § 1301(c)(3) and default principles. Without the maintenance of postpetition payments being made on the secured debt owed to movant by the debtor and co-debtor, the movant's interest in the property will be irreparably harmed if the stay is continued as to the co-debtor under § 1301. 11 U.S.C. § 1301(c)(3).

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

20. [15-14033](#)-A-13 JO PIERSON
MHM-1
MICHAEL MEYER/MV
JAMES CONKEY/Atty. for dbt.

MOTION TO DISMISS CASE
12-1-15 [[23](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

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

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

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

CIVIL MINUTE ORDER

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

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

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

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

21. [15-13934](#)-A-13 KCLASS/BARBARA DENHEYER CONTINUED MOTION FOR RELIEF
HAR-1 FROM AUTOMATIC STAY
DONALD R. WATSON TRUST/MV 11-24-15 [[20](#)]
LAUREN RODE/Atty. for dbt.
HILTON RYDER/Atty. for mv.

Final Ruling

The case dismissed, the matter is denied as moot.

22. [15-13934](#)-A-13 KCLASS/BARBARA DENHEYER OBJECTION TO CONFIRMATION OF
HAR-2 PLAN BY DONALD R. WATSON TRUST
DONALD R. WATSON TRUST/MV AND BRENDA K. CARLSON
12-11-15 [[42](#)]
LAUREN RODE/Atty. for dbt.
HILTON RYDER/Atty. for mv.

Final Ruling

The case dismissed, the objection is overruled as moot.

23. [15-13934](#)-A-13 KCLASS/BARBARA DENHEYER
MHM-1
MICHAEL MEYER/MV
LAUREN RODE/Atty. for dbt.

MOTION TO DISMISS CASE
12-1-15 [[34](#)]

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 debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtors have failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

The debtors have not provided credit counseling certificates. Thus, the debtors are not eligible to be debtors under title 11. *Id.* § 109(h)(1).

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

CIVIL MINUTE ORDER

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

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

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

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

24. [15-14134](#)-A-13 CARLOS/LUZ DELGADO
EGS-1
BAYVIEW LOAN SERVICING, LLC/MV
PIERRE BASMAJI/Atty. for dbt.
EDWARD SCHLOSS/Atty. for mv.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
12-2-15 [[37](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 46272 Panoche Road, Firebaugh, CA

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

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan and 1 postpetition payment is past due in the amount of \$4495.07. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

In addition, 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. Additionally, 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.

25. [15-14134](#)-A-13 CARLOS/LUZ DELGADO
MHM-1
MICHAEL MEYER/MV
PIERRE BASMAJI/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
12-1-15 [[33](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [15-14435](#)-A-13 BENZA YELIZAVETA
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
12-21-15 [[18](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

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

CIVIL MINUTE ORDER

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

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

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

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

27. [15-13238](#)-A-13 TODD/MINDY MACIEL
FLG-2
TODD MACIEL/MV

MOTION TO VALUE COLLATERAL OF
GATEWAY ONE LENDING & FINANCE,
LLC
12-8-15 [[28](#)]

PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral

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

Disposition: Granted

Order: Civil minute order

The debtors request a valuation of the collateral securing respondent creditor Gateway One Lending & Finance, LLC. The collateral is a 2013 Ford F-150 SuperCrew Cab XLT pickup. A portion of the debt secured by the vehicle is not purchase money debt: this non-purchase money portion is debt that resulted from financing the negative equity (the secured debt in excess of the vehicle's value) on the vehicle that the debtor traded in for the vehicle that is now the respondent's collateral. The motion is opposed by the respondent.

UNDISPUTED ISSUES

Many of the issues are not in dispute. The respondent does not dispute that the negative-equity portion of the financing does not constitute debt secured by a purchase money security interest in a motor vehicle for purposes of the hanging paragraph of § 1325(a). In fact, the respondent in its opposition reduces financed negative equity from the balance of \$37,632.19 presently due and owing on respondent's claim.

The parties also agree on the balance of the respondent's claim as of the filing date: \$37,632.19. And respondent does not offer any reason for rejecting the *pro rata* approach used by the movant, with citation to non-binding decisions from other jurisdictions, to determine the portion of respondent's claim that constitutes negative equity. Nor has respondent offered an alternative approach.

DISPUTED ISSUE

The sole issue in dispute is whether the manufacturer's rebate may be deducted solely from the negative equity portion of the respondent's secured claim or whether the rebate should be deducted from the total amount of the secured claim. Although respondent states that it objects to the \$30,256.28 valuation allocated to its secured claim by movant, respondent does not object to this valuation on the ground that the collateral actually has a replacement value that is higher than \$30,256.28. Indeed, no alternative replacement value is offered by the respondent.

Instead, respondent objects to this valuation on the ground that the movant has understated the purchase money portion of the secured claim, which portion cannot be valued under § 1325(a)'s hanging paragraph. Respondent believes that the purchase money portion of the claim should be higher because the manufacturer's rebate of \$5550 should be applied *only* to the negative equity portion of its secured claim. The only fact offered in support is that paragraph 1(g) of the

Security Agreement shows the debtor's agreement to apply the rebate to the negative equity portion of the total financing.

The court rejects the Security Agreement offered as evidence. It has not been authenticated. Fed. R. Evid. 901(a). In addition, even if the agreement had been authenticated, it does not satisfy the requirement of being legible. Revised Guidelines for the Preparation of Documents, EDC 2-901, Section I.C. (Bankr. E.D. Cal. rev. Aug. 12, 2015).

The court will further treat the manufacturer's rebate as reducing the overall amount of the claim, including both the PMSI portion of the claim and the negative equity portion. A rebate is "[a] return of part of a payment, serving as a discount or reduction." *Black's Law Dictionary* 1273 (7th ed. 1999). The court considers the "payment" to be the total amount paid by the debtor even though such amount was financed. A return of this payment, the rebate, reasonably reduces the total amount of the financing, including both the PMSI portion and the negative equity portion of the payment.

The total amount of the present claim is \$37,632.19. The negative equity portion of this claim will be calculated below by multiplying the ratio of the negative equity financing to the total financing by the present claim amount (which total claim amount should reflect a reduction based on the manufacturer's rebate).

DETERMINATION OF THE PMSI-PORION OF CLAIM FOR VALUATION PURPOSES

Legal Standards

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).

Analysis

Here, the debtor does not argue that the vehicle is collateral outside the scope of the hanging paragraph. Instead, the debtor argues that only a portion of the respondent's claim, secured by a the present collateral, described as a 2013 Ford F-150 SuperCrew Cab XLT, is

unprotected by the hanging paragraph because it resulted from financing for the negative-equity portion of the vehicle traded in at the time of the debtor's purchase of the present collateral.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the "negative equity" of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the negative equity portion of an automobile lender's claim is not part of the purchase money security interest protected by the hanging paragraph.

The court adopts the pro-rata approach supported by the cases under which the percentage of the total amount originally financed that was secured by a PMSI is multiplied by the present balance of the debt owed to respondent on its claim. The product is the amount of the present claim protected by the hanging paragraph of § 1325(a). The amount of the present claim that exceeds this product is considered the "non-PMSI" portion of the claim which may be treated as unsecured so long as the value of the collateral does not support it.

The PMSI portion of the amount originally financed (the amount of financing used for the purchase of the present collateral) was \$39,600.48. This is 80.4% of the total amount financed. By inference, 19.6% is the non-PMSI amount that financed negative equity on the trade-in vehicle.

Multiplying 80.4% by the present claim amount of \$37,632.19 equals \$30,256.28, the PMSI portion of the present claim held by respondent. The non-PMSI portion equals \$7,375.91. This non-PMSI portion is not protected by the hanging paragraph, and, as a result, may be treated as an unsecured claim if it is uncollateralized. The debtor has offered evidence that the vehicle is worth \$24,729 by way of the debtor's lay opinion of the collateral's value, Maciel Decl. ¶ 2, ECF No. 30, which is less than the amount of the PMSI portion of the present claim. Because the vehicle is worth less than the PMSI-portion of the respondent's claim, the amount of the debt that exceeds the PMSI portion may be considered an unsecured claim. The court will issue an order valuing the collateral at \$30,256.28.

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 considered the motion, and the papers filed in support and opposition to the motion, and the reply,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2013 Ford F-150 SuperCrew Cab XLT has a value of \$30,256.28. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$30,256.28 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.

28. [15-13238](#)-A-13 TODD/MINDY MACIEL
FLG-5
TODD MACIEL/MV
PETER FEAR/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL SERVICES
12-8-15 [[33](#)]

Final Ruling

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

Disposition: Denied without prejudice

Order: Civil minute order

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). Value is defined as "replacement value" on the date of the petition, which means 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.* § 506(a)(2). The costs of sale or marketing may not be deducted. *Id.*

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 ability to value a secured claim for property other than a motor vehicle is limited to debts incurred more than one year prior to the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the motion requests that the court value collateral consisting of non-vehicular personal property. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6).

29. [10-62439](#)-A-13 JOE/DEANNA MATEUS
MHM-1
MICHAEL MEYER/MV

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
12-4-15 [[42](#)]

MARK ZIMMERMAN/Atty. for dbt.

Final Ruling

Motion: Determination of Final Cure and Payment of Required
Postpetition Amounts under Rule 3002.1(h)

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

Disposition: Granted

Order: Prepared by moving party

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

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response under subdivision (g)." Fed. R. Bankr. P. 3002.1(f). The debtor may file this notice if the trustee does not timely file it. *Id.* The holder of the claim has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g).

The motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h). If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

For the reasons stated in the motion and supporting papers, the court will grant the motion. The court will determine that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

30. [15-14039](#)-A-13 SYLVIA BALLADAREZ
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
12-4-15 [[32](#)]

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 \$537.

CIVIL MINUTE ORDER

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

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

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

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

31. [15-14039](#)-A-13 SYLVIA BALLADAREZ
TCS-2
SYLVIA BALLADAREZ/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
11-30-15 [[24](#)]

Final Ruling

The case dismissed, the matter is denied as moot.

32. [14-15641](#)-A-13 TIMOTHY/ELIZABETH SIMS MOTION TO DISMISS CASE
MHM-1 11-5-15 [[23](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

33. [15-14145](#)-A-13 MARIO/KHAMLA VILLARAMA MOTION TO AVOID LIEN OF
PBB-1 CALIFORNIA BUSINESS BUREAU,
MARIO VILLARAMA/MV INC.
12-16-15 [[15](#)]
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

34. [15-14145](#)-A-13 MARIO/KHAMLA VILLARAMA
PBB-2
MARIO VILLARAMA/MV

MOTION TO VALUE COLLATERAL OF
CALIFORNIA HOUSING FINANCE
AGENCY
12-16-15 [[21](#)]

PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 6341 E. Platt Ave., Fresno, CA.

The court values the collateral at \$190,398. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil

minutes for the hearing.

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

IT IS ORDERED that the motion is granted. The real property collateral located at 6341 E. Platt Ave., Fresno, CA has a value of \$190,398. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

35. [15-13346](#)-A-13 STEPHAN GRAHAM
MHM-1
MICHAEL MEYER/MV
MATIN RAJABOV/Atty. for dbt.

MOTION TO DISMISS CASE
12-16-15 [[46](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

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

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

CIVIL MINUTE ORDER

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

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

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

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

36. [15-10149](#)-A-13 GEORGE/MARY GONZALES MOTION TO MODIFY PLAN
BDB-2 11-16-15 [[46](#)]
GEORGE GONZALES/MV
BENNY BARCO/Atty. for dbt.

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.

37. [13-11651](#)-A-13 STEPHANIE VALDEZ-GARCIA MOTION TO DISMISS CASE
MHM-5 11-13-15 [[94](#)]
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$789.03.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$789.03. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

38. [15-13653](#)-A-13 BRADLEY JAURIQUE
JRL-4
BRADLEY JAURIQUE/MV
JERRY LOWE/Atty. for dbt.

OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER 2
11-18-15 [[41](#)]

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained in part, overruled in part

Order: Prepared by objecting party

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).

The debtor objects to the IRS's proof of claim in the amount of \$80,832.57. The claim is filed as a priority unsecured claim in the amount of \$17,100.98 (§ 507(a)(8)), and general unsecured claim for the remainder of the claim.

The IRS's proof of claim attachment reveals that the claim is filed for tax years 2009, 2010, 2011, 2012, and 2013. The objection only addresses years 2010, 2011, 2012, and 2013. The objection fails to address 2009. Therefore, the court overrules the objection as to taxes assessed for 2009 in the amount of \$12,916.46 with interest in the amount of \$2468.22. The 2009 taxes are shown on the IRS's proof

of claim as a general unsecured claim.

The exhibits filed in support of the objection support the debtor's contention on their face for the most part. But for tax year 2010, the exhibits belie the debtor's contention that the debtor has no tax liability based on his filed returns. (The IRS had assessed tax for all of the above tax years not based on a tax return as the agency noted for most of those years "Unassessed-No Return.") But for the year 2010, the debtor's exhibits show that the filed tax return results in a tax liability of \$11,615. Line 76 is the last line on Form 1040 before the signatures of the taxpayer. That line reveals \$11,615 for 2010.

The IRS's proof of claim shows a priority tax claim for only tax years 2012 and 2013. These tax returns filed by the debtor in support show a \$0 tax liability, and in the absence of an opposition, the court will accept this fact as true by default.

Accordingly, the court sustains the objection in part and disallows the IRS's priority unsecured claim in the amount of \$17,100.98 for tax years 2012 and 2013. It further disallows the IRS's general unsecured claim of \$13,128.40, including interest in the amount of \$1419.63, for tax year 2011.

But the court overrules in part the objection to the IRS's claim for 2009 and 2010 taxes. The court allows the IRS a general unsecured claim for \$11,615 for tax year 2010. It further allows the IRS a general unsecured claim of \$12,916.46 plus \$2468.22 in interest on that claim for tax year 2009. The total amount of the IRS's allowed general unsecured claim, then, will be \$26,999.68.

39. [15-13653](#)-A-13 BRADLEY JAURIQUE
JRL-5
BRADLEY JAURIQUE/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF FRANCHISE
TAX BOARD, CLAIM NUMBER 6
11-18-15 [[45](#)]

Tentative Ruling

The court will overrule the objection as moot for the reasons given by the California Franchise Tax Board. Since the objection was filed in November 2015, the California FTB has filed an amended proof of claim twice on December 2, 2015, and December 17, 2015.

40. [15-13653](#)-A-13 BRADLEY JAURIQUE
MHM-1

JERRY LOWE/Atty. for dbt.
WITHDRAWN

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
11-2-15 [[24](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

41. [15-14153](#)-A-13 KEVIN/MACKENZIE FERREIRA MOTION TO DISMISS CASE
MHM-1 12-1-15 [[25](#)]
MICHAEL MEYER/MV
C. HUGHES/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

42. [15-10857](#)-A-13 LARRY/JENNIE ROMERO MOTION TO VALUE COLLATERAL OF
GEG-2 FRESNO COUNTY FEDERAL CREDIT
LARRY ROMERO/MV UNION
12-8-15 [[30](#)]
GLEN GATES/Atty. for dbt.

Final Ruling

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

43. [15-13558](#)-A-13 MATTHEW/KIMBERLI CARROLL MOTION TO DISMISS CASE
MHM-1 11-30-15 [[23](#)]
MICHAEL MEYER/MV
SCOTT LYONS/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 \$4172.

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.

44.	<u>15-13361</u> -A-13 ALTON/SUSAN CUMMINGS PBB-1 ALTON CUMMINGS/MV PETER BUNTING/Atty. for dbt.	MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A. 12-2-15 [18]
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Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Denied without prejudice

Order: Civil minute order

LIEN AVOIDANCE

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).

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property located at 4949 W. State Highway 140, Merced CA, listed in the order of their priority are: (i) the lien of Capital One Bank (USA), N.A., filed in the real property records of Merced County on 9/16/2010; (ii) the lien of the State of California, Employment Development Department, filed in the real property records of Merced County on 5/17/2011, and (iii) the lien of Cach, LLC filed in the real property records of Merced County on

9/4/2014. The court takes judicial notice of other motions on this calendar (docket control nos. PBB-2 and PBB-3) that seek to avoid judicial liens against the subject real property in this matter, and the exhibits supporting such motions. Fed. R. Evid. 201. The debtors have claimed a \$104,993.22 exemption in the property.

Excluding consideration of all liens against the subject real property that are lower in priority than the lien of the responding party (i.e. the lien of EDD and the lien of Cash LLC), the moving party is not entitled to relief.

The total of all liens, except judicial liens lower in priority than the responding party's lien, plus the exemption amount, equals \$285,418.80. The value of the property without liens is \$290,000. The responding party's judicial lien (\$5130.17), all other liens except those lower in priority (\$175,295.41), and the exemption amount (\$104,993.22) together do not exceed the property's value. As a result, the responding party's judicial lien will not be avoided.

CIVIL MINUTE ORDER

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

The debtor's motion to avoid the lien of Capital One Bank (USA), N.A., has been presented to the court. Having reviewed the motion and papers filed in support, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

45. [15-13361](#)-A-13 ALTON/SUSAN CUMMINGS
PBB-2
ALTON CUMMINGS/MV

MOTION TO AVOID LIEN OF STATE
OF CALIFORNIA, EMPLOYMENT
DEVELOPMENT DEPARTMENT
12-2-15 [[24](#)]

PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004).

Service upon a state or local governmental agency or entity must be made pursuant to Rule 7004(b)(6) or Federal Rule of Civil Procedure 4(j). Fed. R. Bankr. P. 7004(b)(6); Fed. R. Civ. P. 4(j), incorporated by Fed. R. Bankr. P. 7004(a). Rule 7004(b)(6) permits service upon such an entity to be made by first class mail addressed "to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is

brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Fed. R. Bankr. P. 7004(b)(6).

Subsection (a) of section 416.50 of the California Code of Civil Procedure provides that "[a] summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Civ. Proc. Code § 416.50(a). Subsection (b) of this section defines a "public entity" to include "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state." *Id.* § 416.50(b).

Alternatively, service may be made pursuant to Federal Rule of Civil Procedure 4(j)(2). Fed. R. Civ. P. 4(j)(2), *incorporated by* Fed. R. Bankr. P. 7004(a). This rule allows service to be made by delivering a copy of the summons and of the complaint to the public entity's chief executive officer or by following state law requirements for serving process on such a defendant. *Id.*

Service of this motion was accomplished by mail, not by delivery under FRCP 4(j)(2). But the proof of service on its face shows that a clerk, secretary, president, presiding officer, or other head of the pertinent governing body has not been served.

46. 15-13361 -A-13 ALTON/SUSAN CUMMINGS PBB-3 ALTON CUMMINGS/MV PETER BUNTING/Atty. for dbt.	MOTION TO AVOID LIEN OF CACH, LLC 12-2-15 [30]
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Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

LIEN AVOIDANCE

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).

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). “[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens.” *Id.*; 11 U.S.C § 522(f) (2) (B).

The liens against the subject real property located at 4949 W. State Highway 140, Merced CA, listed in the order of their priority are: (i) the lien of Capital One Bank (USA), N.A., filed in the real property records of Merced County on 9/16/2010; (ii) the lien of the State of California, Employment Development Department, filed in the real property records of Merced County on 5/17/2011, and (iii) the lien of Cach, LLC filed in the real property records of Merced County on 9/4/2014. The court takes judicial notice of other motions on this calendar (docket control nos. PBB-1 and PBB-2) that seek to avoid judicial liens against the subject real property in this matter, and the exhibits supporting such motions. Fed. R. Evid. 201. The debtors have claimed a \$104,993.22 exemption in the property.

The lien of Cash LLC is the lowest priority judicial lien. So it would be avoided first in the reverse-priority avoidance approach. All other judicial liens would be considered.

The total of all liens, including the \$3897.24 lien of respondent, the \$5130 lien of Capital One Bank (USA), N.A., the \$683.96 lien of California EDD, the consensual lien, plus the exemption amount of \$104,993.22, equals \$290,000. The value of the property without liens is \$290,000. The responding party's judicial lien plus all other liens including the higher priority judicial liens and the consensual lien, and the exemption amount together do not exceed the property's value. As a result, the responding party's judicial lien will not be avoided.

CIVIL MINUTE ORDER

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

The debtor's motion to avoid the lien of Cach, LLC, has been presented to the court. Having reviewed the motion and papers filed in support, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

47. [15-13361](#)-A-13 ALTON/SUSAN CUMMINGS
PBB-4
ALTON CUMMINGS/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL SERVICES
12-15-15 [\[37\]](#)

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 2000 Chevrolet Silverado 1500 Extended Cab. 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 \$5532.

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 2000 Chevrolet Silverado 1500 Extended Cab has a value of \$5532. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$5532 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.

48. [15-13461](#)-A-13 RAMIRO OCHOA
MHM-3
MICHAEL MEYER/MV
NELLIE AGUILAR/Atty. for dbt. OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-3-15 [[33](#)]

Tentative Ruling

After the objection was filed, an amended Schedule C was filed. The objection will be overruled as moot.

49. [15-13461](#)-A-13 RAMIRO OCHOA
NRA-1
RAMIRO OCHOA/MV
NELLIE AGUILAR/Atty. for dbt. MOTION TO CONFIRM PLAN
RESPONSIVE PLEADING
12-9-15 [[39](#)]

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

The moving party did not provide a sufficient period of notice of the hearing on the motion or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 2002(b) requires not less than 28 days' notice of the time fixed for filing objections and the hearing to consider confirmation of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 42 days' notice of the motion. LBR 3015-1(d). Creditors and parties in interest received less than 28 days' notice of the time fixed for filing objections, and the motion and notice of hearing were filed and served less than 42 days before the hearing.

Additionally, the proposed chapter 13 plan was not filed as a separate document. This fails to comply with Local Rule 3015-1(d)(1).

50. [15-13461](#)-A-13 RAMIRO OCHOA
PPR-1
BANK OF AMERICA, N.A./MV
NELLIE AGUILAR/Atty. for dbt. OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
ASYA LANDA/Atty. for mv. 12-31-15 [[53](#)]

Final Ruling

The court has denied the debtor's motion for confirmation of the First Modified Plan filed December 9, 2015. This objection (which is also construed as an opposition to the motion) is overruled as moot.

51. [15-12763](#)-A-13 FRANK MOOSIOS
DRJ-3
LOUIS MOOSIOS/MV
TRUDI MANFREDO/Atty. for dbt.
DAVID JENKINS/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
11-10-15 [[72](#)]

Tentative Ruling

Motion: Dismiss Chapter 13 Case

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

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 disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material issues: (i) whether the debtor has regular income that qualifies him for relief under chapter 13 of Title 11, see 11 U.S.C. § 109(e); (ii) whether the case was filed in bad faith; and (iii) whether the plan was proposed in bad faith.

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. The parties are asked to consider the following issues:

- (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.

52. [15-12763](#)-A-13 FRANK MOOSIOS
TGM-2
FRANK MOOSIOS/MV
TRUDI MANFREDO/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
11-24-15 [[85](#)]

No tentative ruling.

53. [10-60365](#)-A-13 ALLEN/ALICIA BEASLEY MOTION TO DISMISS CASE
MHM-2 11-5-15 [[43](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

54. [10-60365](#)-A-13 ALLEN/ALICIA BEASLEY MOTION TO DISMISS CASE
MHM-3 11-17-15 [[50](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2527.45.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2527.45. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

55. [14-13366](#)-A-13 ALFRED/KATIE DELGADO MOTION TO DISMISS CASE
MHM-2 11-5-15 [[40](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

56. [15-13975](#)-A-13 NIEVES HOLGUIN AND ALICIA MOTION TO VALUE COLLATERAL OF
TOG-3 ESPINOZA SPRINGLEAF FINANCIAL SERVICES,
NIEVES HOLGUIN/MV INC.
12-15-15 [[24](#)]
THOMAS GILLIS/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 2000 Lincoln Town Car. 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 \$1113.

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 2000 Lincoln Town Car has a value of \$1113. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1113 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.

57. 10-63277 -A-12 DELVIN/DEBORAH GEORGESON FLG-2 PETER FEAR/MV HILTON RYDER/Atty. for dbt. PETER FEAR/Atty. for mv.	MOTION FOR COMPENSATION FOR PETER L. FEAR, SPECIAL COUNSEL(S) 12-17-15 [84]
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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 Law Group, special counsel for the debtors, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court

allow compensation in the amount of \$2,611.00 and reimbursement of expenses in the amount of \$32.69.

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

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

CIVIL MINUTE ORDER

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

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

Fear Law Group'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 \$2,611.00 and reimbursement of expenses in the amount of \$32.69. The aggregate allowed amount equals \$2,643.69. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2,643.69 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

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

58. 10-63277 -A-12 DELVIN/DEBORAH GEORGESON MNE-3 M. ENMARK/MV HILTON RYDER/Atty. for dbt.	CONTINUED MOTION TO DISMISS CASE 5-27-15 [69]
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No tentative ruling.

59. [15-13582](#)-A-13 DAVID/SHEREE PIEPER
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
11-30-15 [[37](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtors have failed to appear at two scheduled § 341 meetings of creditors. See 11 U.S.C. §§ 341, 343.

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

CIVIL MINUTE ORDER

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

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

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

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

60. [15-13384](#)-A-13 ARTHUR/KAREN GONZALES ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-2-15 [[44](#)]

VARDUHI PETROSYAN/Atty. for dbt.
FINAL INSTALLMENT FEE OF
\$154 PAID

Final Ruling

The fee paid, the order to show cause is discharged.

61. [15-13384](#)-A-13 ARTHUR/KAREN GONZALES ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-29-15 [[51](#)]

VARDUHI PETROSYAN/Atty. for dbt.
FINAL INSTALLMENT FEE OF
\$154 PAID

Final Ruling

The fee paid, the order to show cause is discharged.

62. [15-13390](#)-A-13 MARIA SANCHEZ MOTION TO CONFIRM PLAN
TOG-2 11-11-15 [[26](#)]
MARIA SANCHEZ/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Pending

Order: Pending

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

CONFIRMATION

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

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

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

75 DAY ORDER

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

63. [13-14791](#)-A-13 MELISSA SILVEIRA MOTION TO MODIFY PLAN
TGM-1 12-1-15 [[71](#)]
MELISSA SILVEIRA/MV
TRUDI MANFREDO/Atty. for dbt.

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.

64. [15-14092](#)-A-13 DAVID/ROSALINA FERRER
PBB-1
DAVID FERRER/MV

MOTION TO VALUE COLLATERAL OF
EMPLOYMENT DEVELOPMENT
DEPARTMENT
12-10-15 [[18](#)]

PETER BUNTING/Atty. for dbt.

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).

Service upon a state or local governmental agency or entity must be made pursuant to Rule 7004(b)(6) or Federal Rule of Civil Procedure 4(j). Fed. R. Bankr. P. 7004(b)(6); Fed. R. Civ. P. 4(j), *incorporated by* Fed. R. Bankr. P. 7004(a). Rule 7004(b)(6) permits service upon such an entity to be made by first class mail addressed "to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Fed. R. Bankr. P. 7004(b)(6).

Subsection (a) of section 416.50 of the California Code of Civil Procedure provides that "[a] summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Civ. Proc. Code § 416.50(a). Subsection (b) of this section defines a "public entity" to include "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state." *Id.* § 416.50(b).

Alternatively, service may be made pursuant to Federal Rule of Civil Procedure 4(j)(2). Fed. R. Civ. P. 4(j)(2), *incorporated by* Fed. R. Bankr. P. 7004(a). This rule allows service to be made by delivering a copy of the summons and of the complaint to the public entity's chief executive officer or by following state law requirements for serving process on such a defendant. *Id.*

Any proof of service for matter in which a state or local government agency or entity is named as a respondent shall contain either one of the following affirmative statements: (i) "Counsel for the movant affirms that service has been made in a manner that complies with Rule 7004(b)(6) of the Federal Rules of Bankruptcy Procedure"; or (ii) "Counsel for the movant affirms that service has been made in a manner that complies with Rule 4(j)(2) of the Federal Rules of Civil Procedure."

In this case, even though the addresses used for the respondent may have come from the Roster of Governmental Agencies, the respondent has not been served pursuant to Rule 7004(b)(6). Nor has it been served according to Federal Rule of Civil Procedure 4(j)(2). Service on the respondent may be made by first class mail addressed to the clerk,

secretary, president, presiding officer, or other head of respondent's governing body. The service could be made either generically to "clerk, secretary, president, presiding officer, or other head of EDD's governing body." Or it could be made to a specified individual, whose status is indicated on the proof, who is one of the specified types of agents in section 416.50 of the Cal. Civ. Proc. Code.

65. [15-14092](#)-A-13 DAVID/ROSALINA FERRER MOTION TO VALUE COLLATERAL OF
PBB-2 WELLS FARGO FINANCIAL NATIONAL
DAVID FERRER/MV BANK
12-10-15 [\[24\]](#)
PETER BUNTING/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 sectional sofa. 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 the debtor's sectional sofa purchased on or about July 1, 2013, 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.

66. [15-13095](#)-A-13 KATHY TATUM MOTION TO DISMISS CASE
MHM-1 11-5-15 [[19](#)]
MICHAEL MEYER/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

67. [14-11696](#)-A-13 JOHN/LEA MCDERMOTT MOTION TO DISMISS CASE
MHM-3 11-5-15 [[47](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to February 25, 2016, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$2604.52.

A modified plan has been filed in this case as of January 12, 2016. The hearing on the modification is February 25, 2016. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and

the motion to dismiss has not been withdrawn or otherwise resolved,
the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is
continued to February 25, 2016, at 9:00 a.m.

68.	<u>15-12996</u> -A-13 NIGEL MARIN MHM-2 MICHAEL MEYER/MV DISMISSED	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 11-19-15 [<u>62</u>]
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Final Ruling

The case dismissed, the matter is denied as moot.

69.	<u>15-13096</u> -A-13 CRYSTAL MONROY CERVANTES FLG-1 CRYSTAL MONROY CERVANTES/MV PETER FEAR/Atty. for dbt. OPPOSITION WITHDRAWN	CONTINUED MOTION TO CONFIRM PLAN 9-21-15 [<u>15</u>]
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Final Ruling

The opposition withdrawn and the plan confirmed, the matter is dropped
as moot.

70.	<u>15-14296</u> -A-13 LAO CHA RCO-1 THE GOLDEN 1 CREDIT UNION/MV DAVID JENKINS/Atty. for dbt. JONATHAN DAMEN/Atty. for mv.	OBJECTION TO CONFIRMATION OF PLAN BY THE GOLDEN 1 CREDIT UNION 12-8-15 [<u>21</u>]
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No tentative ruling.