

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

WEDNESDAY

JANUARY 14, 2015

PRE-HEARING DISPOSITIONS

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.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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.

9:00 a.m.

1. [14-15102](#)-A-13 TONYA STRANE
PD-1
U.S. BANK NATIONAL
ASSOCIATION/MV
JONATHAN CAHILL/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
12-8-14 [[30](#)]

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained in part, denied in part without prejudice

Order: Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

OBJECTION TO CONFIRMATION

The objecting creditor has raised several grounds for denying confirmation of the plan. The debtor's plan does not violate § 1325(a)(5) because the plan has not provided for the objecting secured creditor's claim. Section 1325(a)(5) only applies its requirements to an allowed secured claim that is *provided for by the plan*. See 11 U.S.C. § 1325(a)(5).

The lack of a prompt cure of any default under § 1322(b)(5) is permissive under that provision. This is not a basis to deny confirmation.

Lastly, the creditor raises the a ground for objection under § 1325(b)(1)(B) because the debtor has failed to apply all of her disposable income to the plan. The creditor is a secured creditor, and does not have standing to raise this objection under this statutory subsection. Section 1325(b) allows only the trustee or the holder of an allowed unsecured claim to object to confirmation under that subsection.

Lastly, the creditor raises feasibility of the plan. The court will treat the objection as addressing the lack of a plan term and lack of any amount to be paid to the trustee on a monthly basis. The creditor points the failure to specify a plan term and plan payments to be remitted to the trustee in paragraph 7 on page 3. The creditor does not raise this fact, however, in support of one of its grounds for objection to confirmation. But the court will nevertheless treat the objection to address the failure of the plan to contain a plan term and monthly plan payment.

A plan without a plan term and that does not provide for regular monthly payments in any amount is clearly not feasible under § 1325(a)(6). Additionally, § 1322(a)(1) requires that the debtor submit all or such portion of future earnings or income to the trustee as is necessary for the execution of the plan. A plan that submits no income or earnings does not comply with § 1322(a)(1) and further does not result in a plan that can be executed. Accordingly, the court

4. [14-15013](#)-A-7 NORA GARCIA CONTINUED MOTION TO VALUE
BDB-1 COLLATERAL OF FLAGSTAR BANK,
NORA GARCIA/MV FSB
10-28-14 [[16](#)]

BENNY BARCO/Atty. for dbt.
CONVERTED 12/19/14

Final Ruling

The case converted to chapter 7, the motion is denied as moot.

5. [14-11515](#)-A-13 RICHARD/JUDEE MARTINEZ MOTION TO DISMISS CASE AND/OR
MHM-2 MOTION TO DISMISS CASE FOR
MICHAEL MEYER/MV FAILURE TO MAKE PLAN PAYMENTS
11-14-14 [[30](#)]

PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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 debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1800.00.

6. [14-15715](#)-A-13 DARNELL CHAMP MOTION FOR RELIEF FROM
JLH-1 AUTOMATIC STAY
DVP, LP/MV 12-8-14 [[9](#)]
JOSEPH HORSWILL/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the matter is denied as moot.

7. [14-13416](#)-A-12 JOAO/LUZIA VAZ
TCS-6
JOAO VAZ/MV
NANCY KLEPAC/Atty. for dbt.

CONTINUED MOTION TO CONFIRM
CHAPTER 12 PLAN
11-18-14 [[71](#)]

No tentative ruling.

8. [14-13416](#)-A-12 JOAO/LUZIA VAZ
TCS-8
JOAO VAZ/MV
NANCY KLEPAC/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
HAMILTON AND JOSEPHINE SANTOS
12-17-14 [[95](#)]

Final Ruling

Motion: Value Collateral [Real Property; Not 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

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); *accord Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' *i.e.*, the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The motion requests that the court value the rental real property collateral securing the respondent's claim. The real property is located at 1047 Hoover Way, Hanford, CA, and is not the debtor's principal residence.

The court values the collateral at \$124,000. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. 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 1047 Hoover Way, Hanford, CA, has a value of \$124,000. Senior liens on the collateral secure debt in the amount of \$177,284.97. The respondent has a secured claim in the amount of \$0.00 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.

9. [14-15616](#)-A-13 BRUCE/CORINNA COOKE ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-29-14 [[17](#)]
MARK ZIMMERMAN/Atty. for dbt.

Final Ruling

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

10. [13-12917](#)-A-13 JAMIE/MARY JANE GALVAN MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS AND/OR MOTION TO DISMISS CASE
MHM-1 11-14-14 [[42](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING, MOTION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [14-13417](#)-A-12 DIMAS/ROSA COELHO
TCS-6
DIMAS COELHO/MV
NANCY KLEPAC/Atty. for dbt.

CONTINUED MOTION TO CONFIRM
CHAPTER 12 PLAN
11-19-14 [[83](#)]

No tentative ruling.

12. [14-13417](#)-A-12 DIMAS/ROSA COELHO
TCS-8
DIMAS COELHO/MV
NANCY KLEPAC/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
HAMILTON AND JOSEPHINE SANTOS
12-17-14 [[106](#)]

Final Ruling

Motion: Value Collateral [Real Property; Not 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

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); *accord Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' *i.e.*, the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The motion requests that the court value rental real property collateral securing the respondent's claim. The real property is located at 435 E. Orange Ave., Hanford, CA, and is not the debtor's principal residence.

The court values the collateral at \$186,000. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. 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 435 E. Orange Ave., Hanford, CA, has a value of \$186,000. Senior liens on the collateral secure debt in the amount of \$248,914.56. The respondent has a secured claim in the amount of \$0.00 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.

13. [12-10318](#)-A-13 JAQUETTA WORTH
SAH-8
JAQUETTA WORTH/MV
SUSAN HEMB/Atty. for dbt.

MOTION TO MODIFY PLAN
11-24-14 [[130](#)]

Final Ruling

Motion: Modification of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rules of Bankruptcy Procedure 3015(g). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct

addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

14. [09-60723](#)-A-13 RICHARD MONTEZ AND
MHM-1 MELISSA MONTES MOTION TO DISMISS CASE FOR
MICHAEL MEYER/MV FAILURE TO MAKE PLAN PAYMENTS
GARY HUSS/Atty. for dbt. 11-17-14 [[43](#)]
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [14-15324](#)-A-13 ADAM/KARALIN BERG MOTION TO VALUE COLLATERAL OF
PLF-1 BANK OF AMERICA, N.A.
ADAM BERG/MV 12-17-14 [[24](#)]
PETER FEAR/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 6702 E. Amhurst Ave., Fresno, CA.

The court values the collateral at \$205,000. 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 6702 E. Amhurst Ave., Fresno, CA, has a value of \$205,000. 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.

16. [14-14125](#)-A-13 MARTIN CALDERON AND
MHM-1 MERCEDES PINEDA

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
11-19-14 [[29](#)]

JOINT DEBTOR DISMISSED

No tentative ruling.

17. [11-16726](#)-A-13 PAUL/KAREN WYNN
DRJ-5

MOTION FOR COMPENSATION FOR
DAVID R. JENKINS, DEBTOR'S
ATTORNEY(S).
12-2-14 [[58](#)]

DAVID JENKINS/Atty. for dbt.

No tentative ruling.

18. [12-14926](#)-A-13 JOHN/KAREN LYSTAD CONTINUED MOTION TO DISMISS
MHM-4 CASE FOR FAILURE TO MAKE PLAN
MICHAEL MEYER/MV PAYMENTS
10-10-14 [[148](#)]

NANCY KLEPAC/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [12-14926](#)-A-13 JOHN/KAREN LYSTAD MOTION TO MODIFY PLAN
TCS-10 12-8-14 [[153](#)]
JOHN LYSTAD/MV
NANCY KLEPAC/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

20. [12-11829](#)-A-13 KEVIN/ALLISON ROGERS MOTION TO MODIFY PLAN
JDR-2 11-25-14 [[51](#)]
KEVIN ROGERS/MV
JEFFREY ROWE/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

21. [12-11829](#)-A-13 KEVIN/ALLISON ROGERS MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-14-14 [[43](#)]
JEFFREY ROWE/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

22. [10-10031](#)-A-13 RUBEN ISAIS AND BEATRIS MOTION TO DISMISS CASE FOR
MHM-2 BRICENO ISAIS FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-17-14 [[108](#)]
SCOTT LYONS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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 debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$3909.

23. [13-10131](#)-A-13 CESAR/MELISSA RODRIGUEZ MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-14-14 [[47](#)]
MICHAEL MIRANDA/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [13-17533](#)-A-13 ALEX/PRISCILLA PANG MOTION TO DISMISS CASE FOR
MHM-3 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-18-14 [[57](#)]
JERRY LOWE/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [11-18136](#)-A-13 RICARDO/YOLANDA ESPINOZA MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-17-14 [[50](#)]
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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 debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$3000.

26. [13-17239](#)-A-7 KEVIN/MICHELLE FOX MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-17-14 [[41](#)]
DAVID JENKINS/Atty. for dbt.
CONVERTED 12/8/14, MOTION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [13-13841](#)-A-13 BRAD/TERESA BOULDEN MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-14-14 [[61](#)]
GLEN GATES/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [12-11143](#)-A-13 JOAQUIN/PAMELA DENIZ MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-14-14 [[46](#)]
GEOFFREY ADALIAN/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the matter is denied as moot.

29. [13-17754](#)-A-13 EDUARDO SOLIS AND ROSA MOTION TO APPROVE LOAN
PLF-2 CASTILLO MODIFICATION
EDUARDO SOLIS/MV 11-26-14 [[85](#)]
GABRIEL WADDELL/Atty. for dbt.

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party according to the instructions below

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

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement or other declaratory relief. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

30. [13-13655](#)-A-13 FROYLAN/MARGARET GARCIA MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-14-14 [[27](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Pending

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). No opposition has been filed, and a non-opposition 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 trustee asserts that cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors admit the trustee is correct in asserting a delinquency in plan payments. The debtors state that a modified plan will be filed prior to the hearing on the motion.

As of January 13, 2015, no modified plan has been filed. A modified plan should be on file as of the date and time of the hearing on January 14, 2015.

31. [14-11461](#)-A-13 ANDREA SOUSA
MHM-4
MICHAEL MEYER/MV
RICHARD BAMBL/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-17-14 [[75](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

32. [14-14361](#)-A-13 MICHAEL/REGINA JOHNSON

DAVID JENKINS/Atty. for dbt.
FINAL INSTALLMENT PAID
12/11/14
- ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-8-14 [[34](#)]

Final Ruling

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

33. [13-17668](#)-A-13 JULIAN/ANN SALINAS
MHM-3
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-18-14 [[91](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

36. [13-14773](#)-A-13 VICTOR FIGUEROA
MHM-3
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-17-14 [[65](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

37. [14-14574](#)-A-13 ALEXANDER/ERLINDA MEJIA
MHM-1
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
12-5-14 [[23](#)]
- VARDUHI PETROSYAN/Atty. for dbt.

No tentative ruling.

38. [11-15876](#)-A-13 JACK/TINA KLINE
MHM-1
MICHAEL MEYER/MV
THOMAS ARMSTRONG/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO DELAY DISCHARGE
11-19-14 [[64](#)]

Tentative Ruling

The motion is continued to February 12, 2015, at 9:00 a.m. to coincide with the debtor's motion at docket no. 69 (THA-4).

39. [11-15876](#)-A-13 JACK/TINA KLINE
THA-4
JACK KLINE/MV
- MOTION FOR ORDER WAIVING
REQUIREMENTS THAT DEBTOR JACK
DEAN KLINE FILE DEBTOR'S
SECTION 11 U.S.C. §1328
CERTIFICATE
11-26-14 [[69](#)]
- THOMAS ARMSTRONG/Atty. for dbt.

Tentative Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Continued to February 12, 2015, at 9:00 a.m. with a supplemental declaration filed no later than 7 days in advance stating what efforts were made to comply with Rule 9037

Order: Prepared by moving party pursuant to the instructions below

DEFAULT ENTERED

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). No opposition has been filed, and a non-opposition 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).

COMPLIANCE WITH RULE 9037

The attorney filing the papers for this matter has not complied with Rule 9037. The attorney shall file an ex parte application to seal and restrict public access to the pertinent filed documents under § 107(c)(1) and Rule 9037(c) or (d). A redacted copy of any restricted, sealed documents will be filed to replace the documents restricted and sealed. The court will continue the hearing on this matter until the attorney files a supplemental declaration that describes what actions were taken to comply with Rule 9037 for all papers filed in connection with this matter.

40. [14-14478](#)-A-13 APRIL MAXFIELD
PLF-1
APRIL MAXFIELD/MV

CONTINUED MOTION TO VALUE
COLLATERAL OF GOLDEN 1 CREDIT
UNION
11-17-14 [[20](#)]

PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may 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 2007 Toyota Camry Hybrid. 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 \$7422.

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 2007 Toyota Camry Hybrid has a value of \$7422. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7422 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.

41. [14-14478](#)-A-13 APRIL MAXFIELD MOTION TO CONFIRM PLAN
PLF-2 11-19-14 [[24](#)]
APRIL MAXFIELD/MV
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

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

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

44. [14-14086](#)-A-13 JAMES/SARAH SIDOTI
MHM-2
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-1-14 [[49](#)]

VARDUHI PETROSYAN/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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 (c)(4) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$4500.

45. [13-15989](#)-A-13 BRENDA LOPEZ
MHM-2
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-17-14 [[46](#)]

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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 debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$3506.

46. [14-14193](#)-A-13 TINA MCCOMB ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-24-14 [[20](#)]

DAVID JENKINS/Atty. for dbt.
\$79.00 FINAL INSTALLMENT
PAID 12/31/14

Final Ruling

The fees paid in full, the order to show cause is discharged.

47. [14-13899](#)-A-13 MIGUEL FLOREZ MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MIGUEL FLOREZ/MV 11-14-14 [[22](#)]
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10:00 a.m.

1. [13-15928](#)-A-7 EDWARD/DENIECE MCARTHUR CONTINUED STATUS CONFERENCE RE:
[14-1113](#) COMPLAINT
SALVEN V. AUTEN ET AL 9-18-14 [[1](#)]
TRUDI MANFREDO/Atty. for pl.

No tentative ruling.

2. [13-10971](#)-A-13 JEREMY WINANS PRETRIAL CONFERENCE RE: AMENDED
[13-1054](#) COMPLAINT
DAVIS V. WINANS
11-21-14 [[95](#)]
THOMAS ARMSTRONG/Atty. for pl.
AMENDED ORDER 12/17/14

Final Ruling

The pretrial conference is continued to February 12, 2015, at 10:00 a.m.

3. [11-60480](#)-A-13 JOSE VILLALOBOS AND MARIA STATUS CONFERENCE RE: COMPLAINT
[14-1137](#) BAEZA 11-10-14 [[1](#)]
MEYER V. CAVALRY PORTFOLIO
SERVICES, LLC
SARAH VELASCO/Atty. for pl.
DISMISSED, CLOSED

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.