

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY

**DATE:** FEBRUARY 21, 2018

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

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

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

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

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

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

1. [17-14301](#)-A-13     **IN RE: HARRY/CHERRY COLES**  
[TCS-1](#)

MOTION TO CONFIRM PLAN  
1-8-2018    [[20](#)]

HARRY COLES/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied as moot

**Order:** Civil minute order

### **MOOTNESS**

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion to confirm is denied as moot.

2. [17-14702](#)-A-13     **IN RE: MARIA WEE**  
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR CALIFORNIA  
HOUSING FINANCE AGENCY  
1-12-2018    [[24](#)]

CALIFORNIA HOUSING FINANCE  
AGENCY/MV  
ERIC ESCAMILLA  
DARLENE VIGIL/ATTY. FOR MV.

### **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:** Overruled as moot

**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.

Section 2.04 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section. This means that the plan's understatement of the pre-petition arrears on a Class 1 claim does not reduce the amount of the arrears reflected in a filed proof of claim. The objection will be overruled because any understatement of the prepetition arrears in the plan does not alter or affect the creditor's rights.

#### **CIVIL MINUTE ORDER**

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

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is overruled as moot.

3. [14-16004](#)-A-13     **IN RE: JUAN/ELIZABETH LECLERE**  
[TCS-2](#)

MOTION TO INCUR DEBT  
2-7-2018    [[44](#)]

JUAN LECLERE/MV  
TIMOTHY SPRINGER

#### **Tentative Ruling**

**Motion:** Approve Debtor's Incurring New Debt [Vehicle Loan]

**Notice:** LBR 9014-1(f)(2); no 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). 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 seeks to incur new debt to finance the purchase of a vehicle. Amended Schedules I and J have been filed indicating that

the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

4. [17-14507](#)-A-13     **IN RE: BULMARO ITURBIDE AND ELENA CABALLERO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-11-2018    [[16](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

5. [17-13708](#)-A-13     **IN RE: NOE RODRIGUEZ AND ARACELI HERNANDEZ**  
[TOG-2](#)

MOTION TO CONFIRM PLAN  
1-4-2018    [[55](#)]

NOE RODRIGUEZ/MV  
THOMAS GILLIS  
PLAN WITHDRAWN

**Final Ruling**

The plan withdrawn, the matter denied as moot.

6. [17-13708](#)-A-13     **IN RE: NOE RODRIGUEZ AND ARACELI HERNANDEZ**  
[TOG-3](#)

MOTION TO CONFIRM PLAN  
1-5-2018    [[64](#)]

NOE RODRIGUEZ/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**No Ruling**

7. [17-13708](#)-A-13     **IN RE: NOE RODRIGUEZ AND ARACELI HERNANDEZ**  
[TOG-5](#)

MOTION TO VALUE COLLATERAL OF TUCOEMAS FEDERAL CREDIT UNION  
2-7-2018    [\[95\]](#)

NOE RODRIGUEZ/MV  
THOMAS GILLIS

### **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 GMC Yukon. 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 \$10,000.

## **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 GMC Yukon has a value of \$10,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$10,000 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.

8. [17-13708](#)-A-13    **IN RE: NOE RODRIGUEZ AND ARACELI HERNANDEZ**  
[TOG-6](#)

MOTION TO AMEND  
2-7-2018    [[101](#)]

NOE RODRIGUEZ/MV  
THOMAS GILLIS

**No Ruling**

9. [17-14608](#)-A-13    **IN RE: ERIC/AMY CAMPBELL**  
[CCR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MANUFACTURED HOME  
INVESTMENTS, INC.  
1-23-2018    [[36](#)]

MANUFACTURED HOME INVESTMENTS,  
INC./MV  
SCOTT LYONS  
CHERYL ROUSE/ATTY. FOR MV.

**No Ruling**

10. [17-14608](#)-A-13     **IN RE: ERIC/AMY CAMPBELL**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-17-2018    [[30](#)]

MICHAEL MEYER/MV  
SCOTT LYONS  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

11. [17-14608](#)-A-13     **IN RE: ERIC/AMY CAMPBELL**  
[SL-3](#)

MOTION TO VALUE COLLATERAL OF MANUFACTURED HOME INVESTMENTS,  
INC.  
1-29-2018    [[47](#)]

ERIC CAMPBELL/MV  
SCOTT LYONS  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Value Collateral

**Notice:** Written opposition filed by the responding party

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or scheduling order

The motion seeks to value the collateral of Manufactured Home Investments, Inc., which is a manufactured home. 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.

12. [17-13709](#)-A-13     **IN RE: CESAR CORTES AND NEREYDA OLEA**  
[TOG-3](#)

MOTION TO CONFIRM PLAN  
1-4-2018    [[45](#)]

CESAR CORTES/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**No Ruling**

13. [17-14214](#)-A-13     **IN RE: RONALD/RENEE TURBIN**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-11-2018    [[32](#)]

MICHAEL MEYER/MV  
GLEN GATES  
DISMISSED

**Final Ruling**

The case dismissed, the matter is dropped as moot.



14. [17-14414](#)-A-13     **IN RE: ISAAC/TERESA NARANJO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-22-2018    [[50](#)]

THOMAS GILLIS  
FINAL \$231.00 INSTALLMENT PAYMENT 1/30/18

**Final Ruling**

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

15. [17-14414](#)-A-13     **IN RE: ISAAC/TERESA NARANJO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-12-2018    [[38](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

16. [14-13416](#)-A-12     **IN RE: JOAO/LUZIA VAZ**  
[TCS-10](#)

MOTION FOR ENTRY OF DISCHARGE  
1-17-2018    [[134](#)]

JOAO VAZ/MV  
NANCY KLEPAC

**Final Ruling**

**Motion:** Entry of Discharge [Chapter 12 case]

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

**Disposition:** Granted

**Order:** Prepared by the movant

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before

the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The motion requests entry of discharge under § 1228 of the Bankruptcy Code. The court finds that the debtor has completed all payments under the plan in this chapter 12 case. See 11 U.S.C. § 1228(a). The debtor has certified by declaration that the debtor has no domestic support obligations under a judicial or administrative order or statute. See *id.*

Under § 1228(f), the court finds that § 522(q)(1) is inapplicable to the debtor. The court finds that a chapter 12 discharge should be entered in this case.

17. [17-14516](#)-A-13     **IN RE: HUGO VILLALOBOS**  
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.  
1-2-2018    [[23](#)]

WELLS FARGO BANK, N.A./MV  
THOMAS GILLIS  
AUSTIN NAGEL/ATTY. FOR MV.

**No Ruling**

18. [17-14816](#)-A-13     **IN RE: JULIO LARA AND ERICA ACEVES**  
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF NASA FEDERAL CREDIT UNION  
1-6-2018    [[9](#)]

JULIO LARA/MV  
THOMAS GILLIS

**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 2014 Ford Explorer. 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 \$17,551.

#### **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 2014 Ford Explorer has a value of \$17,551. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$17,551 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.

19. [14-13417](#)-A-12     **IN RE: DIMAS/ROSA COELHO**  
[TCS-10](#)

MOTION FOR ENTRY OF DISCHARGE  
1-17-2018    [[142](#)]

DIMAS COELHO/MV  
NANCY KLEPAC

### **Final Ruling**

**Motion:** Entry of Discharge [Chapter 12 case]

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

**Disposition:** Granted

**Order:** Prepared by the movant

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

The motion requests entry of discharge under § 1228 of the Bankruptcy Code. The court finds that the debtor has completed all payments under the plan in this chapter 12 case. See 11 U.S.C. § 1228(a). The debtor has certified by declaration that the debtor has no domestic support obligations under a judicial or administrative order or statute. See *id.*

Under § 1228(f), the court finds that § 522(q)(1) is inapplicable to the debtor. The court finds that a chapter 12 discharge should be entered in this case.

20. [17-13317](#)-A-13     **IN RE: LORNA TREMBLE**  
[DMG-2](#)

MOTION TO CONFIRM PLAN  
12-29-2017    [[42](#)]

LORNA TREMBLE/MV  
D. GARDNER  
RESPONSIVE PLEADING

### **No Ruling**

21. [17-14518](#)-A-13     **IN RE: EFREN/AMALIA ROJAS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-17-2018    [[20](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

22. [17-14520](#)-A-13     **IN RE: AMY/BRIAN BELL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-31-2018    [[34](#)]

JERRY LOWE

**Final Ruling**

The case having been dismissed, the order to show cause is discharged as moot.

23. [17-14520](#)-A-13     **IN RE: AMY/BRIAN BELL**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-12-2018    [[20](#)]

MICHAEL MEYER/MV  
JERRY LOWE

**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 \$845.77.

## **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.

24. [17-14520](#)-A-13     **IN RE: AMY/BRIAN BELL**  
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
1-18-2018    [[24](#)]

JERRY LOWE

## **Final Ruling**

The case has been dismissed, so the objection will be overruled as moot.

25. [17-14520](#)-A-13     **IN RE: AMY/BRIAN BELL**  
[MHM-3](#)

MOTION TO DISMISS CASE  
1-18-2018    [[27](#)]

MICHAEL MEYER/MV  
JERRY LOWE

**Final Ruling**

The case has been dismissed, so the motion will be denied as moot.

26. [17-14520](#)-A-13     **IN RE: AMY/BRIAN BELL**  
[MHM-4](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
1-24-2018    [[31](#)]

MICHAEL MEYER/MV  
JERRY LOWE

**Final Ruling**

The case has been dismissed, so the objection will be overruled as moot.

27. [15-14121](#)-A-13     **IN RE: JONATHAN MEEKER**  
[RMP-1](#)

RESCHEDULED HEARING RE: MOTION FOR RELIEF FROM AUTOMATIC  
STAY  
12-13-2017    [[88](#)]

SETERUS, INC./MV  
DAVID JENKINS  
RENEE PARKER/ATTY. FOR MV.

**Final Ruling**

An order has been issued rescheduling the hearing on this matter to April 26, 2018, at 9:00 a.m. The matter will be dropped from this calendar.

28. [17-12729](#)-A-13     **IN RE: VIRGINIA SOTO**  
[JRL-2](#)

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION  
1-24-2018    [[25](#)]

VIRGINIA SOTO/MV  
JERRY LOWE

**Final Ruling**

The parties have resolved the matter by stipulation as to the value of the collateral. The matter will be dropped from calendar as moot.

29. [17-12729](#)-A-13     **IN RE: VIRGINIA SOTO**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
1-2-2018    [[21](#)]

MICHAEL MEYER/MV  
JERRY LOWE  
RESPONSIVE PLEADING

**No Ruling**

30. [17-14529](#)-A-13     **IN RE: BRIAN FOLLAND**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-18-2018    [[22](#)]

MICHAEL MEYER/MV  
DAVID JENKINS  
RESPONSIVE PLEADING  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.



31. [17-14030](#)-A-13     **IN RE: ANGELA WOLF**  
[BDA-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE  
AUTO FINANCE  
12-6-2017    [[18](#)]

CAPITAL ONE AUTO FINANCE/MV  
MARK ZIMMERMAN  
BRET ALLEN/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **Final Ruling**

The parties have resolved the matter by stipulation. The matter will be dropped from calendar as moot.

32. [18-10235](#)-A-13     **IN RE: FREDERICK/HAYLEY JAMES**  
[RSW-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
2-1-2018    [[8](#)]

FREDERICK JAMES/MV  
ROBERT WILLIAMS

#### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Denied

**Order:** Civil minute order

#### **APPLICABILITY OF § 362(c)(3)**

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. 11 U.S.C. § 362(c)(3)(B) (emphasis added).

The debtors' previous case was not pending within the prior one year period. The previous case was dismissed on January 17, 2017, which was more than one year before the filing of the petition in this case. Accordingly, § 362(c)(3) is inapplicable. The motion will be denied.

## CIVIL MINUTE ORDER

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

The debtors' motion to extend the automatic stay has been presented to the court. Because section 362(c)(3) is inapplicable,

IT IS ORDERED that the motion is denied.

33. [17-12539](#)-A-13     **IN RE: LUIS TAVARES**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-5-2018    [\[98\]](#)

JPMORGAN CHASE BANK, N.A./MV  
THOMAS GILLIS  
JAMIE HANAWALT/ATTY. FOR MV.

### Final Ruling

**Motion:** Relief from Automatic Stay and Co-Debtor Stay

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2015 Chevrolet Suburban

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).

### AUTOMATIC STAY OF § 362(a)

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as QZ postpetition payments are past due. The total past due balance of principal and interest is approximately \$13,074.75.

The moving party contends that the value of the vehicle is depreciating and continues to depreciate. Thus, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a)(1)(C) (requiring adequate protection payments to commence

not later than 30 days after the petition as to any creditor secured by personal property).

In addition, the plan does not provide for movant's secured claim. Movant filed a secured claim as claim no. 14-1 secured by the subject property. The plan provides that failure to provide for a secured claim in class 1, 2, 3, or 4 may be cause to terminate the stay.

#### **CO-DEBTOR STAY OF § 1301**

The co-debtor has not opposed the motion. Based on the same factual grounds provided for relief from the automatic stay, relief from the co-debtor stay is warranted under § 1301(c)(3).

#### **CONCLUSION**

Therefore, cause exists to grant relief under § 362(d)(1) and § 1301(c). 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.

34. [17-13943](#)-A-13     **IN RE: STEVEN/ROSA DEBUSKEY**  
[EPE-1](#)

MOTION TO CONFIRM PLAN  
1-11-2018    [[39](#)]

STEVEN DEBUSKEY/MV  
ERIC ESCAMILLA

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

35. [17-12944](#)-A-13     **IN RE: MARIA BECERRA**  
[TOG-1](#)

MOTION TO CONFIRM PLAN  
12-29-2017    [\[58\]](#)

MARIA BECERRA/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

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

Here, the debtor has not carried that burden. In this case, the movant's Schedules I and J were filed 97 days prior to the filing of the motion. And as a consequence, they are not recent enough to be probative of the debtor's ability to perform the plan.

The only other evidence of feasibility is a statement in the debtor's declaration that the debtor will be able to make all payments under the plan. Becerra Decl. ¶ 6. This statement is too conclusory to sustain the debtor's burden of proof.

#### **CIVIL MINUTE ORDER**

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

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

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

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

36. [17-14244](#)-A-13     **IN RE: MANUEL/JINA VILLALOVOS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-12-2018    [\[28\]](#)

MICHAEL MEYER/MV

#### **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).

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.

37. [17-13446](#)-A-13     **IN RE: LEONEL TERA**  
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
1-24-2018    [[39](#)]

MICHAEL MEYER/MV  
PETER FEAR  
NON-OPPOSITION

### **Final Ruling**

The debtor has filed a non-opposition to the trustee's objection to exemptions. The court will sustain the objection on this ground.

38. [17-14549](#)-A-13     **IN RE: THOMAS WHEELER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-5-2018    [[41](#)]

JOEL WINTER

### **Final Ruling**

The case having been dismissed, the order to show cause will be discharged as moot.

39. [17-14549](#)-A-13     IN RE: THOMAS WHEELER  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-17-2018    [\[33\]](#)

MICHAEL MEYER/MV  
JOEL WINTER

### **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.

40. [15-13154](#)-A-13     **IN RE: RUBEN FLORES AND ROSALBA**  
FRANCO-FLORES  
[TCS-1](#)

MOTION TO INCUR DEBT  
2-6-2018    [[23](#)]

RUBEN FLORES/MV  
TIMOTHY SPRINGER

### **Tentative Ruling**

**Motion:** Approve Incurring of Debt [Mortgage Loan to Finance New Home Purchase]

**Notice:** LBR 9014-1(f)(2); no 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). 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 seeks to incur new debt to finance the purchase of a new home. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

41. [17-13863](#)-A-13     **IN RE: MARK GENTRY AND KATRINA MCDONALD**  
GENTRY  
[NES-1](#)

MOTION TO CONFIRM PLAN  
12-28-2017    [[36](#)]

MARK GENTRY/MV  
NEIL SCHWARTZ  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied as moot

**Order:** Civil minute order

### **MOOTNESS**

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan



under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion to confirm is denied as moot.

42. [17-14566](#)-A-13     **IN RE: RONALD OSBURN**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-18-2018    [[36](#)]

MICHAEL MEYER/MV  
JERRY LOWE

#### **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).

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.

43. [12-17271](#)-A-13     **IN RE: BRUCE BLAU**  
[MHM-3](#)

MOTION TO DISMISS CASE  
1-8-2018    [[46](#)]

MICHAEL MEYER/MV  
ADRIAN WILLIAMS  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

44. [17-12677](#)-A-12     **IN RE: ANTONIO/MARIA TEIXEIRA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY  
PETITION  
7-13-2017    [[1](#)]

PETER FEAR

**No Ruling**

45. [17-12677](#)-A-12     **IN RE: ANTONIO/MARIA TEIXEIRA**  
[FW-7](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT WITH ADRIANO TEIXEIRA  
11-2-2017    [[45](#)]

ANTONIO TEIXEIRA/MV  
PETER FEAR  
RESPONSIVE PLEADING

### **No Ruling**

46. [17-13979](#)-A-13     **IN RE: JENNIFER EASTER**  
[DRJ-2](#)

MOTION TO VALUE COLLATERAL OF TUCOEMAS FEDERAL CREDIT UNION  
1-19-2018    [[29](#)]

JENNIFER EASTER/MV  
DAVID JENKINS

### **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 2014 Chevy Silverado. 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 \$23,177.

#### **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 2014 Chevy Silverado has a value of \$23,177. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$23,177 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.

47. [17-13979](#)-A-13     **IN RE: JENNIFER EASTER**  
[DRJ-3](#)

MOTION TO VALUE COLLATERAL OF EDUCATIONAL EMPLOYEES CREDIT  
UNION AND STATE NATIONAL COMPANIES  
1-19-2018    [\[33\]](#)

JENNIFER EASTER/MV  
DAVID JENKINS

### **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 2011 Hyundai Accent. 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 \$4,039.

## **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 2011 Hyundai Accent has a value of \$4,039. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$4,039 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. [17-10280](#)-A-13     **IN RE: JON/AMBER ORTIZ**  
[ALG-1](#)

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE  
12-27-2017    [[33](#)]

JON ORTIZ/MV  
JANINE ESQUIVEL  
RESPONSIVE PLEADING

**No Ruling**

49. [17-10280](#)-A-13     **IN RE: JON/AMBER ORTIZ**  
[ALG-2](#)

MOTION TO MODIFY PLAN  
12-27-2017    [[38](#)]

JON ORTIZ/MV  
JANINE ESQUIVEL  
RESPONSIVE PLEADING

**No Ruling**

50. [17-13886](#)-A-13     **IN RE: FRANK PUMA**  
[GEG-1](#)

MOTION TO VALUE COLLATERAL OF WILSHIRE CONSUMER CREDIT  
1-19-2018    [\[33\]](#)

FRANK PUMA/MV  
GLEN GATES

### **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 2007 Chevrolet Equinox. 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 \$5,000.

#### **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 Chevrolet Equinox has a value of \$5,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$5,000 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.

51. [17-13886](#)-A-13     **IN RE: FRANK PUMA**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
1-24-2018    [[40](#)]

MICHAEL MEYER/MV  
GLEN GATES

#### **Final Ruling**

**Objection:** Objection to Claim of Exemptions  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Sustained  
**Order:** Civil minute order

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 motion. 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).



### **EXEMPTION EXCEEDS STATUTORY LIMIT**

The debtor has claimed an exemption in property (one or more items of property) under Cal. Civ. Proc. Code § 703.140(b)(1) and (5). The debtor's claimed exemption exceeds the statutory limit of \$28,225.00 permitted under paragraphs (1) and (5) of this subsection.

The trustee's objection will be sustained. The debtor's exemption claimed in potential cash for keyes [sic] program from a foreclosing entity, claimed under § 703.140(b)(5), will be disallowed because it exceeds the statutory limit of \$28,225.00.

### **CIVIL MINUTE ORDER**

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

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

The trustee's objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The debtor's exemption claimed in "potential cash for keyes [sic] program from a foreclosing entity on 1738 W. Roberts, Fresno, CA," will be disallowed.

52. [16-10697](#)-A-13     **IN RE: DARCY NUNES**  
[TCS-3](#)

MOTION TO INCUR DEBT  
2-5-2018    [\[54\]](#)

DARCY NUNES/MV  
TIMOTHY SPRINGER

### **Tentative Ruling**

**Motion:** Approve Incurring of Debt [Mortgage Loan to Finance New Home Purchase]

**Notice:** LBR 9014-1(f)(2); no 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). 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 seeks to incur new debt to finance the purchase of a new home. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

53. [16-11997](#)-A-13     **IN RE: VICENTE GALLEGOS**  
[PBB-1](#)

MOTION TO MODIFY PLAN  
12-29-2017    [[20](#)]

VICENTE GALLEGOS/MV  
PETER BUNTING

### **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.

54. [17-14598](#)-A-13     **IN RE: ALEJANDRO TAPIA AND MAYRA IBARRA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER

1-19-2018    [[28](#)]

THOMAS GILLIS

**No Ruling**

55. [17-14598](#)-A-13     **IN RE: ALEJANDRO TAPIA AND MAYRA IBARRA**  
[MHM-2](#)

MOTION TO DISMISS CASE

1-19-2018    [[31](#)]

MICHAEL MEYER/MV

THOMAS GILLIS

RESPONSIVE PLEADING

WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

56. [18-10088](#)-A-13     **IN RE: CARL/DEBRA DEAN**  
[CD-1](#)

MOTION TO EXTEND AUTOMATIC STAY

2-13-2018    [[13](#)]

CARL DEAN/MV

CARL DEAN/ATTY. FOR MV.

NO OST

**Tentative Ruling**

**Motion:** Extend the Automatic Stay

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Denied

**Order:** Civil minute order

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. 11 U.S.C. § 362(c)(3)(B) (emphasis added). Otherwise, if notice and the hearing are not completed before the end of the 30-day period, "the automatic stay terminates in its entirety 30 days after the petition date for a repeat filer." *In re Reswick*, 446 B.R. 362, 365, 371-73 (B.A.P. 9th Cir. 2011).

The debtor has had a previous case pending within the one-year period prior to the filing of this case. Although the motion to extend the stay and notice of hearing on such motion were filed and served before the expiration of the 30-day period after the petition date, the hearing on this matter has not been completed before such deadline.

Accordingly, the automatic stay has already terminated, and the court has no authority to grant the relief requested. The motion will be denied.