

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

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

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: APRIL 14, 2016
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

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

ORAL ARGUMENT

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [15-13701](#)-A-13 KEVIN GERHARDT
MHM-2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-26-16 [[87](#)]

GABRIEL WADDELL/Atty. for dbt.

No tentative ruling.

2. [16-10907](#)-A-13 OCTAVIO SANCHEZ
SL-1
OCTAVIO SANCHEZ/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
3-30-16 [[13](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice
of this motion

Order: Prepared by moving party pursuant to the instructions below

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

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

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

3. [15-14410](#)-A-13 JESSE LOPEZ CONTINUED MOTION TO CONFIRM
JDW-1 PLAN
JESSE LOPEZ/MV 2-1-16 [[41](#)]
JOEL WINTER/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

4. [15-14410](#)-A-13 JESSE LOPEZ CONTINUED MOTION TO DISMISS
MHM-2 CASE
MICHAEL MEYER/MV 1-29-16 [[36](#)]
JOEL WINTER/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [16-10410](#)-A-13 JAMES SPRAGUE ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-22-16 [[18](#)]
SCOTT LYONS/Atty. for dbt.
\$79.00 INSTALLMENT FEE PAID
3/22/16

Final Ruling

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

6. [15-14711](#)-A-13 ANDREA SOUSA CONTINUED MOTION TO CONFIRM
DRJ-4 PLAN
ANDREA SOUSA/MV 1-28-16 [[41](#)]
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The case dismissed, the matter is denied as moot.

7. [15-14711](#)-A-13 ANDREA SOUSA MOTION TO DISMISS CASE
MHM-2 2-19-16 [[49](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$1948 as of February 19, 2016.

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.

8. [15-14811](#)-A-13 RUBEN/KARIMA PARKS
MHM-1
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.

MOTION TO DISMISS CASE
2-19-16 [[21](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The 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 \$3,356.62 as of February 19, 2016.

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.

9. [15-14831](#)-A-13 RAMONE HYDE AND LAKQUISHA MOTION TO VALUE COLLATERAL OF
DRJ-2 HARDAWAY-HYDE MIRABELLA INVESTMENTS
RAMONE HYDE/MV 3-3-16 [[30](#)]
DAVID JENKINS/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 6666 Meadowlark Ave., Winton, CA.

The court values the collateral at \$228,521. 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 6666 Meadowlark Ave., Winton, CA, has a value of \$228,521. 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.

10. [16-11032](#)-A-13 EMILY HAROS
THL-1
MRO INVESTMENTS, INC./MV
TYLER LESTER/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-30-16 [[8](#)]

Final Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

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

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The trustee has not been served.

11. [16-10435](#)-A-13 JOHN MUNOZ
HTP-1
BANK OF THE SIERRA/MV
MARK ZIMMERMAN/Atty. for dbt.
HANNO POWELL/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF THE SIERRA
3-29-16 [[18](#)]

No tentative ruling.

12. [11-11736](#)-A-13 MICHAEL/CHRISTINE FRICK OBJECTION TO CLAIM OF
MHM-1 CITIFINANCIAL, CLAIM NUMBER 1
MICHAEL MEYER/MV 2-25-16 [[56](#)]
GLEN GATES/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Here, prior to the petition date, the debtors owed Citifinancial a secured claim in the amount of \$9,618.95. After the debtors filed their Chapter 13 petition, the creditor filed a properly formatted Proof of Claim and the debtors valued the collateral for that claim (a 1998 Chevy S10 truck) at \$2,500.00, leaving a secured claim in the amount of \$2,500.00 and an unsecured claim in the amount of \$7,118.95. Chapter 13 Plan § 3.04, filed April 5, 2011, ECF #18. The Chapter 13 trustee has paid \$2,225.94 against the secured portion of the claim and \$827.95 against the unsecured portion of the claim. The trustee still owes \$691.85 against the secured claim and \$282.41 against the unsecured claim. Since March 2015, the creditor has been return the trustee's checks tendered toward the secured and unsecured components of the claim. Between March and November 2015, the trustee contacted the creditor to resolve the issue but did so without avail. The court deems the creditors return of uncashed checks and failure to respond to the trustee's inquires an admission that the debt has been made in full insofar as the creditor is concerned. The objection will be sustained as to all unpaid monies due on the secured and unsecured components of the creditor's claim.

13. [15-13238](#)-A-13 TODD/MINDY MACIEL MOTION TO VALUE COLLATERAL OF
FW-6 SPRINGLEAF FINANCIAL SERVICES
TODD MACIEL/MV 3-16-16 [[69](#)]
PETER FEAR/Atty. for dbt.

Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

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

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of personal property described as a computer and an iPad. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$200.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral, described as a computer and an iPad, has a value of \$200. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$200 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.

14. [16-10239](#)-A-13 LUPE GONZALEZ
MHM-1
MICHAEL MEYER/MV
VARDUHI PETROSYAN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
3-11-16 [[22](#)]

No tentative ruling.

15. [16-10239](#)-A-13 LUPE GONZALEZ
MHM-2

VARDUHI PETROSYAN/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
3-24-16 [[28](#)]

No tentative ruling.

16. [16-10140](#)-A-13 MICHAEL LOPEZ
JHW-1
AMERICREDIT FINANCIAL
SERVICES, INC./MV
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-11-16 [[35](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 2013 Chevrolet Camaro

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).

AS TO DEBTOR

The stay that protects the debtor terminates upon case dismissal. 11 U.S.C. § 362(c)(2)(B). This case has been dismissed. The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor.

AS TO ESTATE

Upon case dismissal, the stay does not terminate as to estate property. See 11 U.S.C. § 362(c)(1)-(2). The stay terminates as to estate property "continues until such property is no longer property

of the estate." *Id.* And scheduled property that has not been administered is abandoned to the debtor, but property that is not abandoned and not administered remains property of the estate. 11 U.S.C. § 554(c)-(d). Because the case has not been closed, scheduled property not administered remains property of the estate.

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

In this case, the debtor failed to make 2 postpetition payments on the secured debt. This constitutes cause for relief from stay.

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.

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as a 2013 Chevrolet Camaro. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the dismissal of this case. 11 U.S.C. § 362(c)(2)(B).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

17. [16-10055](#)-A-13 MICHAEL/ROBIN BRIGGS
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
3-29-16 [[35](#)]

STEPHEN LABIAK/Atty. for dbt.

Final Ruling

Matter: Objection to Chapter 13 Plan

Notice: LBR 3015-1(c) (4); no written opposition required

Disposition: Overruled as moot

Order: Civil minute order

Creditors and the trustee may file an objection to confirmation of the Chapter 13 plan within 7 days after the first date set for the creditors' meeting held under § 341 of the Bankruptcy Code. LBR 3015-1(c) (4). But if the debtor withdraws the plan or files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Modifying the plan renders moot any pending objection to confirmation of the previously filed plan.

18. [16-10356](#)-A-13 KENNETH/AMANDA WOOD
PBB-1
KENNETH WOOD/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
USAA FEDERAL SAVINGS BANK
3-17-16 [[14](#)]

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 2013 Volkswagen Jetta 2.0L TDI. 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 \$13,871.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2013 Volkswagen Jetta 2.0L TDI has a value of \$13,871. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$13,871 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. [15-13461](#)-A-13 RAMIRO OCHOA
NRA-5
RAMIRO OCHOA/MV
NELLIE AGUILAR/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF BANK OF
AMERICA, N.A., CLAIM NUMBER 4
3-7-16 [[102](#)]

Tentative Ruling

Objection: Claim Objection

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

DISPUTED ISSUES

Preliminarily, the court identifies the following disputed, material factual issues: the existence of any pre-petition arrearages on the respondent's secured claim.

The court will not treat as disputed the issue of whether the claim should be disallowed in its entirety as the debtor requests. The debtor seeks disallowance of the claim in its entirety on grounds that no mortgage arrearage exists, an inadequate basis even if proved for disallowance of the entire claim. In short, the debtor has presented no argument or factual basis for disallowance of this claim in its entirety, so this issue will not be considered in dispute.

Furthermore, whether there are any post-petition arrearages is not properly the subject of this claim objection, which is directed at a proof of claim representing the status of the respondent's claim as of the petition date.

APPEARANCE REQUIRED

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.

20. [15-13461](#)-A-13 RAMIRO OCHOA
NRA-6
RAMIRO OCHOA/MV

NELLIE AGUILAR/Atty. for dbt.

OBJECTION TO CLAIM OF BANK OF
AMERICA, N.A., CLAIM NUMBER 2
(AMENDED)
3-7-16 [[97](#)]

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Overruled as moot

Order: Civil minute order

The debtor objects to the allowance of Claim No. 2 filed by the claimant. The claim has been withdrawn. The court will overrule the objection as moot.

21. [15-13461](#)-A-13 RAMIRO OCHOA
NRA-7
RAMIRO OCHOA/MV

NELLIE AGUILAR/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF
NATIONSTAR MORTGAGE LLC, CLAIM
NUMBER 7
3-7-16 [[92](#)]

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Overruled as moot

Order: Civil minute order

The debtor objects to the allowance of Claim No. 7-1 held by respondent Nationstar Mortgage, LLC. The basis for this objection is the debtor's dispute about whether a prepetition arrearage exists. The respondent indicates an amended claim was filed removing the arrearage. This amended claim, filed after this claim objection, shows that no prepetition arrearage is owed. The objection will be overruled as moot. Further, the debtor has not given any other basis on which the court could disallow the claim in its entirety.

22. [16-10269](#)-A-13 ROBERT/JENNIFER SALAS
SAH-1
ROBERT SALAS/MV
SUSAN HEMB/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
WEST AMERICA BANK
2-24-16 [[19](#)]

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 2008 BMW 528i. 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 \$6270.

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 2008 BMW 528i has a value of \$6270. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6270 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.

23. [15-14575](#)-A-13 HECTOR ZAVALZA MOTION TO DISMISS CASE
MHM-1 2-19-16 [[33](#)]
MICHAEL MEYER/MV
ERIC ESCAMILLA/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

24. [12-11276](#)-A-13 LUIS/CAROLYN HERNANDEZ OBJECTION TO CLAIM OF HOUSEHOLD
MHM-1 FINANCE CORPORATION, CLAIM
MICHAEL MEYER/MV NUMBER 18-1
2-18-16 [[71](#)]
BENJAMIN SHEIN/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Overruled as moot

Order: Civil minute order

The trustee objects to Claim No. 18-1 filed on April 3, 2013, by debtors on behalf of Household Finance Corporation. The trustee objects on grounds that the claim was filed with an improper payment address for creditor.

This objection was filed February 18, 2016. An amended claim was filed on March 29, 2016. The amended claim shows a different address for the creditor. The objection will be overruled as moot.

25. [12-11276](#)-A-13 LUIS/CAROLYN HERNANDEZ
MHM-2
MICHAEL MEYER/MV

BENJAMIN SHEIN/Atty. for dbt.
RESPONSIVE PLEADING
- OBJECTION TO CLAIM OF CITIBANK
SOUTH DAKOTA, N.A., CLAIM
NUMBER 17-1
2-18-16 [[74](#)]

No tentative ruling.

26. [16-10082](#)-A-13 RICARDO MONTANANA
FW-1
RICARDO MONTANANA/MV
PETER FEAR/Atty. for dbt.
- MOTION TO VALUE COLLATERAL OF
CHASE BANK, USA, N.A.
3-9-16 [[18](#)]

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 2006 Toyota Highlander 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 \$6750.

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 2006 Toyota Highlander Hybrid has a value of \$6750. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6750 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.

27. [15-13184](#)-A-13 DEBBY RENNA
FJG-2
DEBBY RENNA/MV
F. GIST/Atty. for dbt.

CONTINUED MOTION TO CONFIRM
PLAN
9-3-15 [[22](#)]

No tentative ruling.

28. [15-13184](#)-A-13 DEBBY RENNA
MHM-1
MICHAEL MEYER/MV
F. GIST/Atty. for dbt.

CONTINUED MOTION TO DISMISS
CASE
1-28-16 [[61](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

29. [15-13086](#)-A-13 CHARLES KEELE
RWR-1
TULARE COUNTY TAX COLLECTOR/MV

SCOTT LYONS/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TULARE
COUNTY TAX COLLECTOR
9-22-15 [[22](#)]

No tentative ruling.

30. [15-13086](#)-A-13 CHARLES KEELE
SL-1
CHARLES KEELE/MV

SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF
TULARE COUNTY TAX COLLECTOR,
CLAIM NUMBER 6-1
1-8-16 [[39](#)]

No tentative ruling.

31. [16-10090](#)-A-13 HENRY/IRMA ROMERO
MHM-1

PETER BUNTING/Atty. for dbt.

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
3-24-16 [[17](#)]

No tentative ruling.

32. [16-10194](#)-A-13 RAFAEL BRIBISCA AND
MHM-2 MIRIAM PERALTA
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
JOINT DEBTOR DISMISSED
DEBTOR CONVERTED TO CHAPTER 7

MOTION TO DISMISS CASE
3-11-16 [[17](#)]

Final Ruling

The case dismissed as to co-debtor Miriam Peralta and converted to chapter 7 as to debtor Rafael Bribisca, the motion is denied as moot.

33. [16-10977](#)-A-13 ALVINO GARCIA
TCS-1
ALVINO GARCIA/MV
TIMOTHY SPRINGER/Atty. for dbt.
OST 4/4/16

MOTION TO EXTEND AUTOMATIC STAY
4-1-16 [[14](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

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

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

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

34. [15-14306](#)-A-13 CATHLEEN GANDARA
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
1-28-16 [[22](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.