

**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:** APRIL 27, 2017  
**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. [12-11302](#)-A-13 ANDY ANDERSON MOTION TO DISMISS CASE  
DRJ-2 3-21-17 [[30](#)]  
ANDY ANDERSON/MV  
DAVID JENKINS/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Chapter 13 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).

Section 1307(b) of the Bankruptcy Code provides that "[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable." 11 U.S.C. § 1307(b). For the reasons stated in the motion, the court will dismiss this case.

2. [16-10202](#)-A-13 GUADALUPE NUNEZ AND CONTINUED MOTION TO DISMISS  
MHM-1 ALICIA LOZANO CASE  
MICHAEL MEYER/MV 2-7-17 [[20](#)]  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

3. [16-10202](#)-A-13 GUADALUPE NUNEZ AND MOTION TO MODIFY PLAN  
TOG-2 ALICIA LOZANO 3-7-17 [[26](#)]  
GUADALUPE NUNEZ/MV  
THOMAS GILLIS/Atty. for dbt.

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None

has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

4. [17-10408](#)-A-13 PHIL/TAMMY SMITH  
THE BANK OF NEW YORK MELLON/MV  
GABRIEL WADDELL/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
3-30-17 [[14](#)]

### **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.

5. [17-10409](#)-A-13 RUVICELA NUNEZ  
MHM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
3-31-17 [[17](#)]

TIMOTHY SPRINGER/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The objection withdrawn, the matter is dropped as moot.

6. [17-10116](#)-A-13 PAULA PARDO

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-27-17 [[27](#)]

THOMAS GILLIS/Atty. for dbt.

### **Tentative Ruling**

If the \$31 Amendment Fee has not been paid by the time of the hearing,  
the court may be dismissed without further notice or hearing.

7. [12-60021](#)-A-13 JASON/CHANDA DEISMAN  
AP-1  
U.S. BANK NATIONAL  
ASSOCIATION/MV  
RICHARD BAMBL/Atty. for dbt.  
ALEXANDER LEE/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-17-17 [[83](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the moving party's claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or a third party. Section 2.11 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under

applicable law or contract.”

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant’s personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

8. [16-11025](#)-A-13 TIM/CHERIE WILKINS MOTION TO CONFIRM PLAN  
FW-3 3-9-17 [[181](#)]  
TIM WILKINS/MV  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

9. [16-11025](#)-A-13 TIM/CHERIE WILKINS MOTION TO APPROVE STIPULATION  
FW-4 3-9-17 [[189](#)]  
TIM WILKINS/MV  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

10. [17-10334](#)-A-13 JENNIFER MOLINA MOTION FOR COMPENSATION FOR  
MAZ-1 MARK A. ZIMMERMAN, DEBTORS  
ATTORNEY(S)  
3-21-17 [[18](#)]

MARK ZIMMERMAN/Atty. for dbt.

### **Tentative Ruling**

**Application:** Allowance of Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Mark A. Zimmerman has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2800.00 and reimbursement of expenses in the amount of \$0.00.

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

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

#### **CIVIL MINUTE ORDER**

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

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

Mark. A. Zimmerman's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2800.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$2800.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2800.00 shall be allowed as an administrative expense to be paid through the plan.

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

11. [16-12136](#)-A-13 JEANETTE TENA  
TCS-4  
JEANETTE TENA/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN  
3-15-17 [[79](#)]

#### **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.

12. [16-14237](#)-A-13 JULIO/CYNTHIA HERNANDEZ MOTION FOR COMPENSATION FOR  
JES-2 JAMES E. SALVEN, CHAPTER 7  
JAMES SALVEN/MV TRUSTEE(S)  
3-28-17 [[35](#)]  
  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

**Application:** Compensation and Expenses  
**Disposition:** Disapproved without prejudice  
**Order:** Civil minute order

**NOTICE INSUFFICIENT**

All creditors and parties in interest have not received sufficient notice. The hearing on an application for approval of compensation or reimbursement of expenses, when the application requests approval of an amount exceeding \$1000, must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(3).

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

13. [16-14444](#)-A-13 STEVEN WILLIAMS OBJECTION TO DEBTOR'S CLAIM OF  
MHM-2 EXEMPTIONS  
MICHAEL MEYER/MV 3-21-17 [[60](#)]  
MICHAEL AVANESIAN/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the objection is overruled as moot.

14. [17-10250](#)-A-13 SHENG/CHAO VANG  
FW-1  
SHENG VANG/MV

CONTINUED MOTION TO VALUE  
COLLATERAL OF SPECIALIZED LOAN  
SERVICING LLC  
2-23-17 [[17](#)]

GABRIEL WADDELL/Atty. for dbt.  
RESPONSIVE PLEADING

### **Final Ruling**

The parties have indicated in their joint status report that they have met and conferred and are discussing settlement. The hearing will be continued until June 16, 2017, at 9:00 a.m. If a settlement has not been reached by that time, the court will hold a scheduling conference on that date and schedule dates for an evidentiary hearing and set discovery deadlines.

15. [17-10250](#)-A-13 SHENG/CHAO VANG  
FW-2  
SHENG VANG/MV

CONTINUED MOTION TO VALUE  
COLLATERAL OF STATE LABOR  
COMMISSION  
2-23-17 [[21](#)]

GABRIEL WADDELL/Atty. for dbt.

### **Final Ruling**

The hearing on this matter will be continued until June 16, 2017, at 9:00 to track with the hearing on the other motion to value the same collateral (FW-1) in this case.

16. [16-13064](#)-A-13 PAUL YANEZ  
MHM-3  
MICHAEL MEYER/MV  
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO DISMISS CASE  
3-23-17 [[80](#)]

### **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 \$1027.00.

#### **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 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.

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| 17. | <a href="#"><u>16-13064</u></a> -A-13    PAUL YANEZ<br>NES-4<br>PAUL YANEZ/MV<br>NEIL SCHWARTZ/Atty. for dbt.<br>RESPONSIVE PLEADING | MOTION TO CONFIRM PLAN<br>3-16-17 [ <a href="#"><u>73</u></a> ] |
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#### **Final Ruling**

The motion to confirm the plan will be denied as moot given the court's dismissal of this case.

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| 18. | <a href="#"><u>17-10374</u></a> -A-13    JESSE/LISA VASQUEZ<br>MHM-1<br>MICHAEL MEYER/MV<br>SCOTT LYONS/Atty. for dbt.<br>WITHDRAWN | MOTION TO DISMISS CASE<br>3-21-17 [ <a href="#"><u>20</u></a> ] |
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#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

19. [16-11575](#)-A-13 LOUIS/LILLIE PANCOTTI  
FW-3

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR WADDELL,  
P.C. DEBTORS ATTORNEY(S)  
3-14-17 [[40](#)]

GABRIEL WADDELL/Atty. for dbt.

### **Final Ruling**

**Application:** Allowance of Interim Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3144.00 and reimbursement of expenses in the amount of \$402.70.

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

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

### **CIVIL MINUTE ORDER**

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

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

Fear Waddell, P.C.'s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3144.00 and reimbursement of expenses in the amount of \$402.70. The aggregate

allowed amount equals \$3546.70. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3546.70 shall be allowed as an administrative expense to be paid through the plan.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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

20. [17-10478](#)-A-13 RICHARD/JEANIE ROCHA  
MHM-1  
JANINE ESQUIVEL/Atty. for dbt.  
WITHDRAWN
- OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
3-31-17 [[26](#)]

**Final Ruling**

The objection withdrawn, the matter is dropped as moot.

21. [15-13086](#)-A-13 CHARLES KEELE  
RWR-2  
TULARE COUNTY TAX COLLECTOR/MV  
SCOTT LYONS/Atty. for dbt.  
RUSSELL REYNOLDS/Atty. for mv.
- MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-21-17 [[73](#)]

**No tentative ruling.**

22. [16-14590](#)-A-13 RICHARD/KRISTINE WALLACE  
JDR-1  
RICHARD WALLACE/MV  
JEFFREY ROWE/Atty. for dbt.  
RESPONSIVE PLEADING
- MOTION TO MODIFY PLAN  
3-13-17 [[21](#)]

**Final Ruling**

**Motion:** Modification of a Chapter 13 Plan

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

23. [17-10291](#)-A-13 JUAN GONZALEZ AND MARIA MOTION TO DISMISS CASE  
MHM-1 DIAZ 3-20-17 [[20](#)]  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

24. [16-13492](#)-A-13 DOUGLAS/LINDA HORWOOD OBJECTION TO CLAIM OF CAVALRY  
SAH-1 SPV I, LLC, CLAIM NUMBER 10  
DOUGLAS HORWOOD/MV 3-7-17 [[16](#)]  
SUSAN HEMB/Atty. for dbt.

**Final Ruling**

Pursuant to the Amended Notice of Hearing, ECF #20, the matter will be called on May 11, 2017, at 9:00 a.m.

25. [16-13893](#)-A-13 DAVID/DELIA HAYES OBJECTION TO DEBTOR'S CLAIM OF  
MHM-2 EXEMPTIONS  
MICHAEL MEYER/MV 3-21-17 [[51](#)]  
RESPONSIVE PLEADING

**Tentative Ruling**

The objection will be overruled as moot given the filing of amended Schedule C and the filing of another objection to claim of exemptions by the trustee.

26. [17-10295](#)-A-13 GABRIEL/VICTORIA ALDANA  
TOG-1  
GABRIEL ALDANA/MV  
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
ONE MAIN FINANCIAL  
3-20-17 [[17](#)]

### **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 1999 Dodge Ram. 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 \$1419.

### **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 1999 Dodge Ram has a value of \$1419. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1419 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. <a href="#">17-10295</a> -A-13 GABRIEL/VICTORIA ALDANA TOG-2 GABRIEL ALDANA/MV  THOMAS GILLIS/Atty. for dbt.	MOTION TO VALUE COLLATERAL OF BALBOA THRIFT AND LOAN ASSOCIATION 3-20-17 [ <a href="#">22</a> ]
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### **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 Nissan Altima. 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 \$8719.

#### **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 Nissan Altima has a value of \$8719. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$8719 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

28. [17-11222](#)-A-13 ALEX/PRISCILLA PANG  
JRL-1  
ALEX PANG/MV  
JERRY LOWE/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
4-13-17 [[11](#)]

#### **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.