

**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: MAY 25, 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. [16-12603](#)-A-13 RONALD/MIMI AKSENOV
TJS-1
FINANCIAL SERVICES VEHICLE
TRUST/MV
PETER BUNTING/Atty. for dbt.
TIMOTHY SILVERMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-20-17 [[22](#)]

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 unexpired lease claim in section 3. Section 3.02 of the confirmed Chapter 13 Plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow the nondebtor party to an unexpired lease to obtain possession of a leased property, to dispose of it under applicable law, and to exercise its rights against 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 to obtain possession of the leased property and to dispose of it under applicable law. Therefore, no effective relief can be awarded on the movant's request for stay relief. The movant's personal interest in obtaining relief from the stay no longer exists as the stay no longer affects its lease. The motion will be denied as moot.

2. [13-12504](#)-A-13 ROEL/ALMA CALO
AP-1
JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
SCOTT LYONS/Atty. for dbt.
GINA KIM/Atty. for mv.
CONT'D TO 8/24/17, ECF NO.
81

PRETRIAL CONFERENCE RE: MOTION
FOR RELIEF FROM AUTOMATIC STAY
11-22-16 [[38](#)]

Final Ruling

Pursuant to Order, ECF #81, the pretrial conference is continued to August 24, 2017, at 9:00 a.m.

3. [13-15305](#)-A-12 ROGELIO CALDERON AND CONTINUED MOTION FOR AN ORDER
MHM-1 LAURA BOBADILLA-DELGADO TO SHOW CAUSE WHY ATTORNEY FEES
MICHAEL MEYER/MV PAID SHOULD NOT BE DISGORGED
4-20-17 [[54](#)]
- THOMAS GILLIS/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Pursuant to Order, ECF #66, no motion for compensation having been filed or noticed for hearing, the motion for an order to show cause is granted. Moving party shall submit an order approving the motion as well as a proposed Order to Show Cause.

4. [17-10207](#)-A-13 PEDRO/MICHELLE SARABIA CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 3-10-17 [[20](#)]
STEVEN ALPERT/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [17-10408](#)-A-13 PHIL/TAMMY SMITH MOTION TO VALUE COLLATERAL OF
FW-1 BRAND SOURCE
PHIL SMITH/MV 4-25-17 [[23](#)]
GABRIEL WADDELL/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 furniture, including a sofa, love seat and bedroom set. 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 \$250.

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 furniture, including a sofa, love seat and bedroom set, has a value of \$250. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$250 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.

6. [17-10408](#)-A-13 PHIL/TAMMY SMITH
FW-2
PHIL SMITH/MV
GABRIEL WADDELL/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CARFINANCE CAPITAL
4-25-17 [[27](#)]

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 Jeep Wrangler Unlimited Sport SUV. 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 \$17,850.

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 Jeep Wrangler Unlimited Sport SUV has a value of \$17,850. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$17,850 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.

7. [17-10116](#)-A-13 PAULA PARDO CONTINUED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
3-27-17 [[27](#)]

THOMAS GILLIS/Atty. for dbt.
\$31.00 FILING FEE PAID
4/27/17

Final Ruling

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

8. [17-10128](#)-A-13 AMIR SADE MOTION TO CONFIRM PLAN
FJG-1 4-8-17 [[37](#)]
AMIR SADE/MV
F. GIST/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

9. [17-10128](#)-A-13 AMIR SADE MOTION TO DISMISS CASE
MHM-2 4-21-17 [[49](#)]
MICHAEL MEYER/MV
F. GIST/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

10. [16-14237](#)-A-13 JULIO/CYNTHIA HERNANDEZ MOTION TO CONFIRM PLAN
TOG-2 4-11-17 [[50](#)]
JULIO HERNANDEZ/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The chapter 13 trustee has indicated that the first § 341 hearing was on May 9, 2017. The case was previously converted on March 28, 2017. As a result, the trustee had not had an opportunity to examine the debtors or audit this case before the deadline for filing an objection to this motion. The hearing on confirmation will be continued to June 16, 2017, at 9:00 a.m. The trustee may file an amended objection no later than 14 days before the continued hearing date.

11. [17-10244](#)-A-13 DANIEL AMADOR CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 3-20-17 [[28](#)]
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [17-10645](#)-A-13 CHARLEY/JAMEE STANKEWITZ MOTION TO DISMISS CASE
MHM-1 4-17-17 [[16](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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's response to the trustee's motion constitutes an admission that the documents requested have not been provided to the trustee. Although the debtors state that they sent the "remaining requested documents" to the Trustee on May 9, 2017, the debtors have offered no evidence of this. The trustee's evidence in reply indicates that a number of the requested documents have not been provided to the trustee, including (1) a list of all inventory and equipment, current values, dates of purchase, and values when purchased, (2) list of any and all funds, accounts receivables owed to the business at the time of filing, and (3) copies of California BOE sales tax returns and proof of payment for the quarter ending prior to the petition.

The debtors also admit that they have not yet filed their 2016 tax returns, but that they are working to complete them. Because the 2016 tax period ended within the 4-year period before the petition date, § 1308(a) required the debtors to file their 2016 tax returns no later than the day before the date on which the first § 341 was scheduled. The first § 341 was scheduled for April 11, 2017. The debtors' opposition to this motion was filed on May 11, 2017, and in that opposition, the debtors admit not having filed their 2016 tax returns.

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.

13. [12-16046](#)-A-13 ERNEST/KATHERINE SHELTON MOTION TO MODIFY PLAN
TCS-9 4-10-17 [[173](#)]
ERNEST SHELTON/MV
TIMOTHY SPRINGER/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.

14. [12-12650](#)-A-13 ROBERT/MONICA OLIVEIRA CONTINUED MOTION TO DISMISS
MHM-5 CASE
MICHAEL MEYER/MV 4-7-17 [[95](#)]
GEOFFREY ADALIAN/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [17-10659](#)-A-13 GERALD/PATRICIA SANDERS MOTION TO DISMISS CASE
MHM-1 4-17-17 [[22](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [13-14264](#)-A-13 JOSE IBARRA AND ROSEMARY MOTION TO MODIFY PLAN
TOG-1 GUTIERREZ 4-11-17 [[34](#)]
JOSE IBARRA/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The court continues the hearing on this matter, at the request of the debtors, to June 30, 2017, at 9:00 a.m. No later than 14 days before the continued hearing date, the debtors shall file a status report addressing the trustee's grounds for objection and whether the debtors intend to dismiss the case.

17. [16-10164](#)-A-13 DENNIS/PATRICIA WOOD
PLG-2
DENNIS WOOD/MV
STEVEN ALPERT/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF CAVALRY
SPV 1, LLC, CLAIM NUMBER 1
3-31-17 [[35](#)]

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition filed by the trustee

Disposition: Sustained in part

Order: Prepared by objecting party

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The last transaction date and the last payment date on the contractual account on which respondent's claim is based was in 2008, which is more than 4 years prior to the January 22, 2016, petition date.

The trustee opposes the objection because the trustee has already paid funds to this creditor in the amount of \$1357.61. The deadline for filing a claim objection was 60 days after the notice of filed claims. Here, the deadline was October 17, 2016, and this claim objection was filed in 2017. But the trustee does not oppose this claim objection to the extent it requests disallowance of the claim amount in excess of the amount the trustee has already paid.

The objection will be sustained in part. The claim will allowed in the amount of \$1357.61, which is the amount that the trustee has paid to date to the claimant-respondent, and the remaining balance of the claim will be disallowed.

18. [17-10564](#)-A-13 HARRY/LISA BARDIZBANIAN MOTION TO DISMISS CASE
MHM-1 4-18-17 [[27](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [16-14670](#)-A-13 ROBERT/STEPHANIE CONTINUED OBJECTION TO
MHM-1 FITZGERALD CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-17-17 [[12](#)]

PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

20. [17-10573](#)-A-13 JOEL/BETTY HILL MOTION TO DISMISS CASE
MHM-1 4-18-17 [[21](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [09-60774](#)-A-13 BRIAN NEAL CONTINUED MOTION TO VALUE
SL-3 COLLATERAL OF GREEN TREE
BRIAN NEAL/MV 10-27-10 [[44](#)]
SCOTT LYONS/Atty. for dbt.

Final Ruling

The motion, having been properly noticed for hearing and no objection having been filed, was heard on December 17, 2010, by The Honorable Whitney Rimel. The motion was granted at that hearing but no order was ever submitted to the court for signature. On April 20, 2017, the moving party filed a Notice of Hearing on Order Granting Motion to Value Collateral, which the court deems to be a request that an order granting the motion be issued. The April 20, 2017 notice having been properly noticed for hearing and no opposition having been filed, the court will issue an order granting the motion. Moving party shall submit an appropriate form of order.

22. [17-10374](#)-A-13 JESSE/LISA VASQUEZ
SL-1
JESSE VASQUEZ/MV

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
4-20-17 [[29](#)]

SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2012 Dodge Avenger. 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 \$8800.

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 2012 Dodge Avenger has a value of \$8800. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$8800 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. [17-10474](#)-A-13 ALVARO DIAZ AND MARISELA MOTION TO DISMISS CASE
MHM-1 LUA 4-21-17 [[28](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [17-10578](#)-A-13 OSCAR/NATALIE MOTION TO DISMISS CASE
MHM-1 VILLAGOMEZ-LEMUS 4-18-17 [[38](#)]
MICHAEL MEYER/MV
ROSALINA NUNEZ/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [17-10581](#)-A-13 CRESENCIO/BERTHA ESTRADA MOTION TO VALUE COLLATERAL OF
TOG-1 CITIMORTGAGE, INC.
CRESENCIO ESTRADA/MV 4-19-17 [[15](#)]
THOMAS GILLIS/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 4302 N. Emerson Ave., Fresno, CA.

The court values the collateral at \$199,347. 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 4302 N. Emerson Ave., Fresno, CA, has a value of \$199,347. 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.

26. [16-13893](#)-A-13 DAVID/DELIA HAYES OBJECTION TO DEBTOR'S CLAIM OF
MHM-3 EXEMPTIONS
MICHAEL MEYER/MV 4-24-17 [[63](#)]
DISMISSED

Final Ruling

The case dismissed, the matter is denied as moot.

27. [16-13197](#)-A-13 BENJAMIN CASTILLO MOTION TO AVOID LIEN OF
SAH-3 BASELINE FINANCIAL SERVICES
BENJAMIN CASTILLO/MV 3-31-17 [[50](#)]
SUSAN HEMB/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

28. [16-13197](#)-A-13 BENJAMIN CASTILLO
SAH-4
BENJAMIN CASTILLO/MV
SUSAN HEMB/Atty. for dbt.

MOTION TO MODIFY PLAN
3-31-17 [[54](#)]

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.

29. [16-14697](#)-A-13 JOSE DIAZ AND BLANCA
TOG-1 VILLA
JOSE DIAZ/MV
THOMAS GILLIS/Atty. for dbt.
OPPOSITION WITHDRAWN

MOTION TO CONFIRM PLAN
4-3-17 [[38](#)]

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.