

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

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JUNE 8, 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. [15-14303](#)-A-13 LORI SILVA OBJECTION TO CLAIM OF EQUITY 1
RSW-2 LOANS, CLAIM NUMBER 9
LORI SILVA/MV 5-5-16 [[28](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

2. [15-15010](#)-A-13 PHILLIP BARROW AND MOTION TO CONFIRM PLAN
PWG-1 KATHLEEN NETZER 4-21-16 [[28](#)]
PHILLIP BARROW/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

3. [15-15010](#)-A-13 PHILLIP BARROW AND MOTION TO VALUE COLLATERAL OF
PWG-2 KATHLEEN NETZER BANK OF AMERICA, N.A.
PHILLIP BARROW/MV 4-22-16 [[35](#)]
PHILLIP GILLET/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 2007 21-foot Sun tracker Pontoon Boat. 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 \$12,000.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value 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 2007 21-foot Sun tracker Pontoon Boat has a value of \$12,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$12,000 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

4. [15-15010](#)-A-13 PHILLIP BARROW AND MOTION TO VALUE COLLATERAL OF
PWG-3 KATHLEEN NETZER WELLS FARGO BANK, N.A.
PHILLIP BARROW/MV 4-22-16 [\[40\]](#)
PHILLIP GILLET/Atty. for dbt.

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 Monaco Cayman Motorhome. 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 \$78,550.

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 Monaco Cayman Motorhome has a value of \$78,550. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$78,550 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.

5. [16-10013](#)-A-13 GARY/MELISSA HAFELI CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 3-8-16 [[33](#)]
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

[The hearing on this matter will be concurrent with the hearing on the debtors' motion to confirm a chapter 13 plan in this case having docket control no. RSW-1.]

No tentative ruling

6. [16-10013](#)-A-13 GARY/MELISSA HAFELI MOTION TO CONFIRM PLAN
RSW-1 3-31-16 [[41](#)]
GARY HAFELI/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

7. [16-10719](#)-A-13 LUIS MUNOZ AND JOSEPHINE OBJECTION TO CONFIRMATION OF
MHM-1 CASTILLO PLAN BY TRUSTEE MICHAEL H.
MEYER
5-9-16 [[22](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 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.

DISPOSABLE INCOME ISSUES

The trustee objects to confirmation on a number of grounds. The court will sustain the objection on the ground that the debtors' plan fails to provide for all of debtors' projected disposable income to be applied to unsecured creditors under the plan. § 1325(b)(1)-(3).

The court takes judicial notice of the Debtors' plan and the debtors' schedules, and these document's contents. Fed. R. Evid. 201(c). The statements made in these documents are nonhearsay admissions.

Debtors' Schedule B indicates ownership of 2 vehicles, a 2014 Ford Fusion and a 2012 Honda Accord LX. The debtors' plan provides for

the surrender of the Debtors' 2014 Ford Fusion. But on their Form 122C-2, Line 11, the Debtors have deducted local transportation expenses based on 2 vehicles. And on the same form, at line 13b, the debtors have deducted ownership costs for the surrendered vehicle; at line 33, the debtors have deducted the debt payment for the surrendered vehicle.

The debtors have improperly claimed ownership deductions on Form 122C-2 for which no debt or lease payments are owed. See *Ransom v. FIA Card Servs.*, 131 S. Ct. 716, 725-26 (2011) ("The ownership category encompasses the costs of a car loan or lease and nothing more.").

Further, debtors have improperly deducted transportation expenses for a vehicle that will be surrendered during the plan. They have also deducted debt payments for a vehicle that they have admitted that they will not own during the plan's term, even though the form instructs that only debt secured by an interest in property that "you own" (Line 33) may be deducted.

The trustee also notes that the debtor improperly deducts \$180 per month for whole life insurance premiums. On Schedule A/B, the debtors describe two whole life insurance policies with Farmers Insurance. Form 122C-1's instructions clearly indicate on Line 18 that debtors must not deduct premiums for any form of life insurance other than term.

The total of these improper deductions (not including other ones raised by the trustee) equals \$933. Debtors report net disposable income of \$-666.25. As a result, the plan does not comply with § 1325(b) because it neither pays unsecured creditors in full nor provides payment to unsecured creditors of all projected disposable income. See 11 U.S.C. § 1325(b).

Because the court sustains the trustee's objection on this ground, the court does not address the merits of the other grounds for the trustee's objection to confirmation, including other grounds based on disposable income.

CIVIL MINUTE ORDER

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

The trustee's objection to confirmation of the plan has been presented to the court. Having considered the objection 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 sustained and confirmation will be denied.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c) (1).

8. [16-10719](#)-A-13 LUIS MUNOZ AND JOSEPHINE VVF-1 CASTILLO AMERICAN HONDA FINANCE CORPORATION/MV ROBERT WILLIAMS/Atty. for dbt. VINCENT FROUNJIAN/Atty. for mv. ORDER, ECF NO. 29
- OBJECTION TO CONFIRMATION OF PLAN BY AMERICAN HONDA FINANCE CORPORATION
4-11-16 [[15](#)]

Final Ruling

The objection withdrawn by stipulation and order, the matter is dropped as moot.

9. [16-10720](#)-A-13 PHILIP/SUSANNE ICARDO MHM-1 MICHAEL MEYER/MV ROBERT WILLIAMS/Atty. for dbt. WITHDRAWN
- MOTION TO DISMISS CASE
5-5-16 [[17](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [15-14421](#)-A-13 JANICE KAVERN
- ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-19-16 [[40](#)]
- PHILLIP GILLET/Atty. for dbt.
\$25.00 FILING FEE PAID
4/28/16

Final Ruling

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

11. [16-11321](#)-A-13 GUADALUPE MIRANDA BH-1 SANTIAGO CREEK MOBILE HOME PARK, L.P./MV ROBERT BRUMFIELD/Atty. for mv.
- MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
5-25-16 [[20](#)]

Tentative Ruling

Motion: Confirm Absence of Automatic Stay

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 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).

CONFIRMATION OF THE STAY'S TERMINATION

Section 362(j) allows the court to issue orders confirming the termination of the automatic stay. It provides, "On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated." 11 U.S.C. § 362(j).

If a debtor who files a petition has had another petition pending within the preceding one year period that was dismissed, then the automatic stay terminates with respect to the debtor on the 30th day after the filing of the later case, unless the stay is extended. 11 U.S.C. § 362(c)(3)(A). 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).

ANALYSIS

The debtor has had one pending case within the preceding 1-year period that was dismissed during February 2016. This was case no. 15-14713. The order dismissing the case is at docket no. 33 in that prior case.

The motion identifies another case that was pending in the preceding 1-year period, but that case was not this debtor's case, but the case of a different person. The court considers this debtor to have filed only 1 prior bankruptcy in the year before the present petition in this case, and that 1 prior bankruptcy was dismissed.

This case was filed on April 18, 2016. The date that is 30 days after the petition in this case is May 18, 2016. No order extending the automatic stay has been issued. The stay has terminated.

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.

Santiago Creek Mobile Home Park, L.P.'s motion to confirm the termination of the stay has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The automatic stay is no longer in effect with respect to the debtor.

12. [15-13122](#)-A-13 MARIA GUARDADO MOTION TO DISMISS CASE
MHM-1 4-20-16 [[32](#)]
MICHAEL MEYER/MV
D. HARELIK/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [14-10027](#)-A-13 DANIEL/GAIL BOWMAN MOTION TO DISMISS CASE
MHM-2 4-20-16 [[94](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

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

14. [15-10130](#)-A-13 KAMMI SARGENT MOTION TO DISMISS CASE
MHM-2 4-20-16 [[46](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2819.90.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

15. [11-19832](#)-A-13 JEAN MORGAN MOTION TO DISMISS CASE
MHM-5 4-21-16 [[150](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [13-11432](#)-A-13 HUBERT/JANET RABANAL MOTION TO DISMISS CASE
MHM-1 4-20-16 [[76](#)]
MICHAEL MEYER/MV
PHILLIP GILLET/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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$8974.50.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

17. [14-14537](#)-A-13 DENNIS/LASHANE WILLIAMS MOTION TO DISMISS CASE
MHM-3 4-20-16 [[49](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 3, 2016, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1841.

The debtors' response indicates that they are unable to become current on the past due plan payments. They have filed a modified plan. The scheduled hearing on the modification is August 3, 2016. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to August 3, 2016, at 9:00 a.m.

18. [16-10442](#)-A-13 VALARIE WAGNER-PRESTAGE MOTION TO DISMISS CASE
MHM-1 4-13-16 [[24](#)]
MICHAEL MEYER/MV
SHARRON WILLIAMS GELOBTER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [16-10442](#)-A-13 VALARIE WAGNER-PRESTAGE
MHM-2

SHARRON WILLIAMS GELOBTER/Atty. for dbt.

No tentative ruling.
20. [16-10642](#)-A-13 TIMOTHY MAYO

PATRICK KAVANAGH/Atty. for dbt.
FINAL INSTALLMENT PAID
5/25/16

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.
21. [16-10343](#)-A-13 CANDACE WILKERSON
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.
22. [16-10343](#)-A-13 CANDACE WILKERSON
MHM-2

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.
23. [16-10343](#)-A-13 CANDACE WILKERSON
RSW-1
CANDACE WILKERSON/MV

ROBERT WILLIAMS/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
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
5-6-16 [[29](#)]
- ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-6-16 [[28](#)]
- MOTION TO DISMISS CASE
5-5-16 [[19](#)]
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
5-6-16 [[23](#)]
- MOTION TO VALUE COLLATERAL OF
ACCREDITED SURETY AND CASUALTY
COMPANY
5-24-16 [[26](#)]

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 2307 March Ave., Bakersfield, CA.

The court values the collateral at \$213,233. 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 2307 March Ave., Bakersfield, CA, has a value of \$213,233. 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.

24. [16-10744](#)-A-13 SYLVIA CASTRO MOTION TO DISMISS CASE
MHM-1 5-5-16 [[13](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [16-10649](#)-A-13 ROBERT WHITEZELL MOTION TO DISMISS CASE
MHM-1 5-4-16 [[20](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/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 debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343. In addition, the debtor has failed to make all payments due under the plan. Payments are delinquent in the amount of \$8206.04.

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.

26. [16-10649](#)-A-13 ROBERT WHITEZELL
MHM-2
OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
5-6-16 [[24](#)]

ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

The case dismissed, the objection is overruled as moot.

27. [16-10352](#)-A-13 DAMIEN ULERY
MHM-1
MOTION TO DISMISS CASE
4-12-16 [[25](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

28. [16-10253](#)-A-13 JOE PEREZ
KDG-4
OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-6-16 [[102](#)]
MONICA TRIANO/MV
PATRICK KAVANAGH/Atty. for dbt.
JACOB EATON/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The hearing continued to June 15, 2016, at 9:00 by order, ECF #130,
this matter is dropped from calendar as moot.

29. [16-10254](#)-A-13 FRED/KAREN FRANK
MHM-1
MOTION TO DISMISS CASE
4-27-16 [[33](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/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 \$8676.

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.

30. [16-10254](#)-A-13 FRED/KAREN FRANK MOTION TO DISMISS CASE
MHM-2 5-5-16 [[37](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

The case dismissed, the matter is denied as moot.

31. [16-10357](#)-A-13 APRIL BLANDBURG ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-16-16 [[49](#)]
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

If the installment payment of \$30 due May 9, 2016, and the installment payment of \$77 due June 8, 2016, have not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

32. [16-10357](#)-A-13 APRIL BLANDBURG
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
5-6-16 [[45](#)]

PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.

33. [16-10357](#)-A-13 APRIL BLANDBURG
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
4-12-16 [[30](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

34. [14-11761](#)-A-13 FRANCISCO/DIANE LOPEZ
MHM-3
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
4-21-16 [[80](#)]

No tentative ruling.

35. [14-11761](#)-A-13 FRANCISCO/DIANE LOPEZ
SW-1
ALLY FINANCIAL/MV
ROBERT WILLIAMS/Atty. for dbt.
ADAM BARASCH/Atty. for mv.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
4-18-16 [[74](#)]

No tentative ruling.

36. [11-62772](#)-A-13 JOHN/BETH NEMETH
PWG-7
JOHN NEMETH/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF ANGEL
OLIVERA SALAS, CLAIM NUMBER 14
4-15-16 [[310](#)]

*[This matter will be called at the end of the Chapters 12 & 13
calendar.]*

No tentative ruling.

37. [16-10874](#)-A-13 ADOLPHO BARRERA
PK-1
ADOLPHO BARRERA/MV

MOTION TO AVOID LIEN OF
SPRINGLEAF FINANCIAL SERVICES,
INC.
4-27-16 [[13](#)]

PATRICK KAVANAGH/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).

In this case, the lien sought to be avoided is a nonpossessory, nonpurchase money security interest in household goods and appliances. Specifically, the respondent creditor holds a nonpossessory, nonpurchase money security interest in (1) a 50-inch flatscreen TV, (2) a PS2 Gaming System and video games, (3) exercise equipment consisting of a PRV Crosswalk treadmill, and (4) a desktop computer. The term "household goods" is defined in § 522(f)(4). Other items of personal property listed in Section 522(f)(1)(B)(i) are not defined, including household furnishings, wearing apparel, appliances, books, animals, crops, instruments, or jewelry. § 522(f)(1)(B)(i), (f)(4).

The items of personal property subject to the respondent's lien fall within the term *household goods* and the term *appliances*. § 522(f)(1)(B), (4)(A). The personal computer and flatscreen TV are expressly mentioned. § 522(f)(4)(A). The electronic entertainment equipment (gaming system and video games) are personal effects. § 522(f)(4)(A)(xiv). The treadmill is either a personal effect or an appliance. § 522(f)(1)(B), (f)(4)(A)(xiv). The electronic entertainment equipment does not have a fair market value exceeding the \$650 limitation in § 522(f)(4)(B)(ii).

These items of personal property have been claimed exempt. By inference, this means exempt in the amount of their full value. Therefore, the respondent's lien, plus the exemption, exceeds the value of the property by the amount equal to respondent's lien. The lien is avoidable in full.

38. [16-11576](#)-A-13 SCOTT KIRK MOTION TO VALUE COLLATERAL OF
PK-1 GM FINANCIAL
SCOTT KIRK/MV 5-12-16 [[13](#)]
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [16-11576](#)-A-13 SCOTT KIRK MOTION TO VALUE COLLATERAL OF
PK-2 WELLS FARGO DEALER SERVICES
SCOTT KIRK/MV 5-12-16 [[20](#)]
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

40. [16-11576](#)-A-13 SCOTT KIRK MOTION TO VALUE COLLATERAL OF
PK-3 AMERICREDIT FINANCIAL SERVICES,
SCOTT KIRK/MV INC.
5-12-16 [[29](#)]
PATRICK KAVANAGH/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

Only 27 days' notice of the motion was given. The court will treat the matter as having been noticed under LBR 9014-1(f)(2).

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 2014 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 \$17,353.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2014 Dodge Avenger has a value of \$17,353. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$17,353 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

41. [12-14478](#)-A-13 RAY/NADA KOMMEL
RSW-3
RAY KOMMEL/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION FOR HARDSHIP DISCHARGE
5-3-16 [[61](#)]

No tentative ruling.

42. [14-14878](#)-A-13 BRIAN/DIANA POOLE
MHM-4
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
4-20-16 [[78](#)]

*[Of the trilogy of motions/objections filed in this case, the matter
will be called third in order.]*

No tentative ruling.

43. [14-14878](#)-A-13 BRIAN/DIANA POOLE
MHM-5
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
4-20-16 [[73](#)]

*[Of the trilogy of motions/objections filed in this case, the matter
will be called second in order.]*

No tentative ruling.

44. [14-14878](#)-A-13 BRIAN/DIANA POOLE
RSW-2
BRIAN POOLE/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO SEAL
5-12-16 [[83](#)]

*[Of the trilogy of motions/objections filed in this case, the matter
will be called first in order.]*

No tentative ruling.

45. [14-11379](#)-A-13 ROBERTA CUMBERLAND
MHM-4
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
4-20-16 [[140](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.