

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

WEDNESDAY

JULY 8, 2015

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

PRE-HEARING DISPOSITIONS

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.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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. [15-11000](#)-A-13 ERNEST/BARBARA SANDOVAL CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-21-15 [[25](#)]

Tentative Ruling

Unless the fee of \$79 due April 16, 2015, is paid in full by the time of the hearing, the case will be dismissed.

2. [15-11000](#)-A-13 ERNEST/BARBARA SANDOVAL CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-21-15 [[41](#)]

Tentative Ruling

Unless the fee of \$77 due May 18, 2015, is paid in full by the time of the hearing, the case will be dismissed.

3. [15-11000](#)-A-13 ERNEST/BARBARA SANDOVAL ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-22-15 [[53](#)]

Tentative Ruling

Unless the fee of \$77 due June 15, 2015 is paid in full by the time of the hearing, the case will be dismissed.

4. [14-15909](#)-A-13 ALVARO/LILIA LOPEZ MOTION TO DISMISS CASE
MHM-2 5-12-15 [[46](#)]
MICHAEL MEYER/MV
NIMA VOKSHORI/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [15-11810](#)-A-13 SALVADOR TEJEDA
HTK-1
PTM PROPERTIES, LLC/MV
H. KHARAZI/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-10-15 [[37](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Subject: Lessee's commercial leasehold interest in the real property located at 1418 18th St., Bakersfield, CA

PROCEDURAL ISSUES

The notice of the motion is deficient. The Local Rules direct that the notice of a motion be separately filed. LBR 9014-1(d)(3). Here, the notice and motion have been improperly combined.

Further, the Local Rules prescribe the contents of the notice of hearing. The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. LBR 9014-1(d)(4). Additionally, if written opposition is required, additional language is required in the notice informing respondents the consequences of failure to file timely opposition.

Lastly, the court does not find that the *motion* succinctly and sufficiently describes the nature of the relief being requested. Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds. The motion (not the memorandum in support) fails state with particularity the factual grounds and legal basis (specific theories for stay relief under § 362) for the relief requested.

SUBSTANTIVE ISSUES

The memorandum of points and authorities cites two provisions of the Bankruptcy Code to justify a determination that no stay applies to the subject leasehold interest. These provisions are § 541(b)(92) and § 362(b)(10). A leading treatise on bankruptcy discusses the automatic stay's applicability to non-residential leases and notes that § 362(b)(10)'s "exception is limited to leases under which the stated term expires, not to leases terminated for other reasons." 3 *Collier on Bankruptcy* ¶ 362.05[10], at 362-76 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rel. 2013). Later, the treatise states, "Only when the termination is based on expiration of the *agreed* term of the lease may the stay be disregarded." *Id.* (emphasis added).

In any future motion for stay relief as to the subject property, the movant should ensure that any argument based on § 362(b)(10) or § 541(b) provides sufficient factual grounds supporting a conclusion

that the stated lease term expired pre-petition or should offer a brief of all binding authorities (or any persuasive authorities if no binding authority exists) that support the movant's alternative interpretation of these provisions, i.e. that these Code provisions apply when movant terminated the lease for reasons other than expiration of the stated, agreed term.

CIVIL MINUTE ORDER

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

PTM PROPERTIES, LLC's motion for relief from the automatic stay has been presented to the court. Given the procedural deficiency noted by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

6. [15-11810](#)-A-13 SALVADOR TEJEDA
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
6-9-15 [[28](#)]

Tentative Ruling

Motion: Dismiss Case

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).

CASE DISMISSAL

The debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

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.

7. [15-10914](#)-A-13 RICHARD/SUSAN BILL
RSW-1
RICHARD BILL/MV

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, NATIONAL
ASSOCIATION
6-2-15 [[28](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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 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 12000 Whippoorwill Lane, Bakersfield, CA.

The court values the collateral at \$223,000. 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 12000 Whippoorwill Lane, Bakersfield, CA, has a value of \$223,000. 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.

8. [12-18220](#)-A-13 ROBERT/DEANNA CANNON MOTION TO DISMISS CASE
MHM-3 5-18-15 [[67](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [12-19324](#)-A-13 EFREN ROQUE MOTION TO DISMISS CASE
MHM-2 5-18-15 [[40](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [15-11226](#)-A-13 CHRISTOPHER/ABIGAIL OBJECTION TO CONFIRMATION OF
MHM-1 ESTRADA PLAN BY TRUSTEE MICHAEL H.
MEYER
6-10-15 [[21](#)]
VINCENT GORSKI/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

11. [11-16727](#)-A-13 DONNA TINDER MOTION TO DISMISS CASE
MHM-2 5-15-15 [[51](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [14-16131](#)-A-13 CHARLTON/LAURA PROSSER MOTION TO DISMISS CASE
MHM-1 5-7-15 [[21](#)]
MICHAEL MEYER/MV
RICHARD STURDEVANT/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [14-16131](#)-A-13 CHARLTON/LAURA PROSSER MOTION TO CONFIRM PLAN
RS-1 5-26-15 [[25](#)]
CHARLTON PROSSER/MV
RICHARD STURDEVANT/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

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

MOOTNESS

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Modifying the plan renders moot any pending confirmation motion for a previously filed plan. The debtors have filed a Second Amended Chapter 13 Plan. This plan is set for hearing on August 5, 2015. The further modification of the plan and filing another motion to confirm renders moot the debtors motion to confirm the First Amended Chapter 13 Plan.

INSUFFICIENT NOTICE

Even if the motion were not moot, the court would deny the motion for procedural deficiencies. All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). 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 motion being noticed. 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.

CIVIL MINUTE ORDER

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

The debtors motion to confirm chapter 13 plan has been presented to the court. Given that the debtors have filed another motion to confirm a modified plan that has been filed and set for hearing after the hearing on this motion,

IT IS ORDERED that the motion is denied as moot.

14. [15-11835](#)-A-13 JAMES/JAMIE CANNON MOTION FOR RELIEF FROM
LKW-1 AUTOMATIC STAY
BLACK GOLD ROAD, LLC/MV 6-9-15 [[14](#)]
ROBERT WILLIAMS/Atty. for dbt.
LEONARD WELSH/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: Lots 7 through 14 of Parcel Map Waiver No. 4-08 as per Certificate of Compliance recorded 6/18/2009 in the Official Records of the Kern County Recorder

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

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

The debtor has missed 1 post-petition payment and 3 prepetition payments due on the debt secured by the moving party's lien. The proposed plan does not provide for the moving party's lien or propose any treatment for the movant's claim. These facts constitute cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1).

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

15. [15-11835](#)-A-13 JAMES/JAMIE CANNON
MDP-1
CATERPILLAR FINANCIAL SERVICES
CORPORATION/MV
ROBERT WILLIAMS/Atty. for dbt.
MARK PONIATOWSKI/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY CATERPILLAR FINANCIAL
SERVICES CORPORATION
6-10-15 [[28](#)]

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.

The objection will be overruled because any understatement of the amount of the creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. 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.

16. [15-11835](#)-A-13 JAMES/JAMIE CANNON
TGF-1
CREATIVE REALTY MARKETING AND
MORTGAGE/MV
ROBERT WILLIAMS/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

MOTION TO DISMISS CASE
6-17-15 [[35](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 5, 2015, at 9:00 a.m. to coincide with the chapter 13 trustee's conversion motion

Order: Civil minute order

CONTINUANCE OF HEARING

The court will continue the hearing on this motion to August 5, 2015, at 9:00 a.m. The chapter 13 trustee has filed a conversion motion to be heard on that date. If the debtors wish to file an opposition to the dismissal motion, they should do so no later than August 22, 2015, the date that is 14 days before the continued hearing date.

CIVIL MINUTE ORDER

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

Creditor Creative Realty Marketing & Mortgage's motion to dismiss this case, which motion has been joined by Creditor Black Gold Road, LLC, having been presented to the court,

IT IS ORDERED that the hearing on the motion is continued to August 5, 2015, at 9:00 a.m. The debtors may file written opposition on or before August 22, 2015.

17. [14-15036](#)-A-13 DWAYNE/SHEILA WILSON
MHM-3
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
DISMISSED

MOTION TO DISMISS CASE
5-7-15 [[36](#)]

Final Ruling

The case dismissed, the matter is dropped as moot.

18. [12-16950](#)-A-13 MALCOLM/BETTY RAWLS MOTION TO MODIFY PLAN
WIN-3 5-8-15 [[79](#)]
MALCOLM RAWLS/MV
MICHELLE CHOE/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

19. [15-11654](#)-A-13 ELLIOT BADGER AND BRENDA MOTION TO DISMISS CASE
MHM-1 VAQUERA 6-9-15 [[19](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 5, 2015, at 9:00 a.m.

Order: Civil minute order

CONTINUANCE OF HEARING

The trustee moves to dismiss this case based on the debtors failure to attend the § 341 meeting of creditors. The debtors impliedly admit this failure given that they do not dispute it but state that they will appear at the next continued meeting of creditors on July 8, 2015.

The court will continue the hearing on this motion to August 5, 2015. If the debtors have not fulfilled their obligation to appear at the continued creditors' meeting on July 8, 2015, the court will likely dismiss this case. If the debtors have appeared, the trustee may withdraw the motion before the continued hearing date.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the motion is continued to August 5, 2015, at 9:00 a.m. If the motion has not been withdrawn as of July 22, 2015, the trustee shall file a status report as of that date addressing the appearance of the debtors at the continued creditors' meeting.

20. [15-10162](#)-A-13 JAIME/RUTH GARZA
PK-4
JAIME GARZA/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
5-12-15 [[90](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

CONFIRMATION

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

75 DAY ORDER

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).

21. [15-10162](#)-A-13 JAIME/RUTH GARZA MOTION FOR COMPENSATION FOR
PK-5 PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
5-12-15 [[98](#)]
- PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to August 5, 2015, at 9:00 a.m. The debtors have objected to the applicant's request for compensation. Application for Payment of Fees 9(7), filed May 12, 2015, ECF # 98. But they have not specified (1) whether the objection is to the entire fee application or to specific fees; (2) if the later, which fees are objectionable; and (3) the basis for the objection. Not later than August 22, 2015, the debtors may augment the record. Any objection shall be served on the U.S. Trustee, Chapter 13 trustee and Patrick Kavanagh. The court will issue a civil minute order.

22. [10-14865](#)-A-13 JOSE MELGAR AND ALMA MOTION TO DISMISS CASE
MHM-1 POLANCO MELGAR 5-14-15 [[116](#)]
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [10-14865](#)-A-13 JOSE MELGAR AND ALMA MOTION TO DISMISS CASE
MHM-2 POLANCO MELGAR 5-22-15 [[122](#)]
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)(6) to dismiss the case. The debtor's plan term was for 60 months. The debtor has failed to complete the plan in the 60-month term. The petition was filed April 30, 2010. The 60th month of the plan was April 2015. The total claims filed require an aggregate payment of \$50,703.30, but the debtors have paid only \$42,206.00. The court will dismiss the case.

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 case is hereby dismissed based on a material default with respect to a term of the debtors' confirmed plan. The debtor has passed the sixtieth month of the 60-month plan term and has not paid \$8,497.03 that the plan required them to pay within the 60-month term.

24. [11-19665](#)-A-13 WILLIAM/SYLVIA TATSUNO MOTION TO DISMISS CASE
MHM-2 5-15-15 [[47](#)]
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).

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 \$3856.64.

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. Payments are delinquent in the amount of \$3856.64. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

25. [15-11771](#)-A-13 ODIS/LAURIE BROWN ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-5-15 [[46](#)]
PATRICK KAVANAGH/Atty. for dbt.
\$233 INSTALLMENT FEE PAID

Final Ruling

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

26. [15-11771](#)-A-13 ODIS/LAURIE BROWN MOTION TO CONFIRM PLAN
PK-2 5-22-15 [[29](#)]
ODIS BROWN/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to August 5, 2015, at 9:00 a.m.

Order: Civil minute order

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

CONFIRMATION OBJECTIONS

One of the grounds for the trustee's objection is that a motion to value has not been filed as to a wedding ring that is collateral securing the claim of Plaza Jewelers. The plan proposed by the debtors, of which the court takes judicial notice, classifies Plaza

Jewelers claim as a Class 2 claim reduced based on the value of the collateral. Furthermore, on the docket is a motion filed by the debtors that requests a valuation of Plaza Jewelers' collateral, a wedding ring.

Accordingly, the court continues the hearing on confirmation to August 5, 2015. Before the continued hearing date, the debtors should determine whether they dispute the trustee's objection based on insufficient funding for the plan. If the debtors dispute the trustee's objection relating to whether the plan funds in months 1 through 6, then the debtors shall file a reply to the opposition no later than July 22, 2015. If the debtors agree to increase the plan payment in the order confirming the plan in an amount consistent with the trustee's figures, then the debtors or the trustee should file a status report before the continued hearing date indicating this fact.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the motion is continued to August 5, 2015, at 9:00 a.m. Before the continued hearing date, the debtors should determine whether they dispute the trustee's objection based on insufficient funding for the plan. If the debtors dispute the trustee's objection relating to whether the plan funds in months 1 through 6, then the debtors shall file a reply to the opposition no later than July 22, 2015. If the debtors agree to increase the plan payment in the order confirming the plan in an amount consistent with the trustee's figures, then the debtors or the trustee should file a status report before the continued hearing date indicating this fact.

27. [15-11771](#)-A-13 ODIS/LAURIE BROWN MOTION TO VALUE COLLATERAL OF
PK-3 GM FINANCIAL
ODIS BROWN/MV 6-3-15 [[39](#)]
PATRICK KAVANAGH/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 an interest in 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 Cadillac Escalade ESV. 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 \$22,883.

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 Cadillac Escalade has a value of \$22,883. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$22,883 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. [15-11772](#)-A-13 DAVID GERSTUNG
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
6-10-15 [[16](#)]

SUSAN SALEHI/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

29. [15-11373](#)-A-13 FREDRICK HALL
PK-1
FREDRICK HALL/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
6-8-15 [[19](#)]

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 1998 Pace Arrow Vision 33P. 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 \$15,150.

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 1998 Pace Arrow Vision 33P has a value of \$15,150. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$15,150 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.

30. [15-12374](#)-A-13 ROBERT MURILLO
PK-1
ABEL RAMOS/MV
PATRICK KAVANAGH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-22-15 [9]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: Unlawful detainer proceeding in Kern County Superior Court (Case No. BCL-15-10028) relating to 321 Berkshire Road, Bakersfield, CA 93307

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).

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. The motion will be granted, and

the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

31. [10-63881](#)-A-13 MICKEY/KATHRYN HOWELL MOTION TO DISMISS CASE
MHM-4 5-20-15 [[99](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

32. [13-13383](#)-A-13 BOBBY MAXWELL MOTION TO DISMISS CASE
MHM-2 6-10-15 [[104](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.