

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** THURSDAY  
**DATE:** AUGUST 2, 2018  
**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-12801](#)-A-13    **IN RE: JEREMY/SHIRRELL COOK**  
[WSL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
7-19-2018    [[10](#)]

JEREMY COOK/MV  
GREGORY SHANFELD

### **Tentative Ruling**

**Motion:** Extend the 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).

### **EXTENSION OF THE STAY**

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

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

### **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.

A motion to extend the automatic stay has been presented to the court in this case. 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, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

2. [18-12204](#)-A-13    **IN RE: THOMAS/RUSELL WHEELER**  
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE  
SERVICES, LLC  
7-2-2018    [[14](#)]

CARRINGTON MORTGAGE SERVICES,  
LLC/MV  
JOEL WINTER  
DIANA TORRES-BRITO/ATTY. FOR MV.

**Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan  
**Notice:** LBR 3015-1(c)(4); no written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

3. [18-11807](#)-A-13    **IN RE: JIMMY/JULIE CASTELLON**  
[NLL-1](#)

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT  
6-21-2018    [[19](#)]

THE BANK OF NEW YORK MELLON/MV  
STEVEN ALPERT  
NANCY LEE/ATTY. FOR MV.

**Final Ruling**

**Motion:** Approval of Mortgage Loan Modification  
**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).

#### **LOAN MODIFICATION**

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests stay relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." See 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 326(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(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 court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. 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 court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

4. [18-12208](#)-A-13     **IN RE: LYDIA MARTINEZ**  
[RM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY 800-802 FERN STREET,  
LLC  
7-13-2018     [\[27\]](#)

800-802 FERN STREET, LLC/MV  
THOMAS HOGAN  
RAMIN MAHDAVI/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Matter:** Objection to Confirmation

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or scheduling order

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

(1) whether property of the estate includes real property located at 971 Nash Road, Hollister, CA, contained in debtor's revocable living trust (the "Martinez Family Trust" dated August 1, 1996), see 11 U.S.C. § 541(a); *In re Irwin*, 338 B.R. 839, 852-53 (E.D. Cal. 2006) (Ishii, J.) (drawing distinction between irrevocable trusts and revocable trusts in determining whether property held in a trust is property of the estate); Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 6:152, at 6-23 (rev. 2017) ("Under California law, property placed in a revocable trust constitutes estate property.").

(2) whether the debtor may have another revocable trust that holds real property located at 21211 Broadwell Avenue, Torrance, CA, which is property of the estate under the authorities listed in issue (1) above;

(3) given the resolution of issues (1) and (2), whether the debtor's plan proposing to pay a 6% dividend to unsecured creditors satisfies the liquidation requirement of 11 U.S.C § 1325(a)(4);

(4) given the resolution of issues (1) and (2), whether the debtor's plan has been proposed in good faith, 11 U.S.C. § 1325(a)(3).

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

5. [16-12526](#)-A-13    **IN RE: ARMONDO/ELVIRA LONGORIA**  
[GEG-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF GATES LAW GROUP  
DEBTORS ATTORNEY(S)  
7-5-2018    [[31](#)]

GLEN GATES

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

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

#### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Gates Law Group, APC has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$6,540.00 and reimbursement of expenses in the amount of \$0.00.

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

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

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$6,540.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$6,540.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$6,540.00 shall be allowed as an administrative expense to be paid through the plan as follows: \$4,770.00 paid to Pascuzzi, Pascuzzi & Stoker and the balance of \$1,770.00 paid to to Gates Law Group, APC.

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

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

6. [18-11926](#)-A-13     **IN RE: STEVEN/TELVA RAMIREZ**  
[SL-2](#)

MOTION TO CONFIRM PLAN  
6-20-2018    [[34](#)]

STEVEN RAMIREZ/MV  
SCOTT LYONS

**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.

7. [18-10435](#)-A-13     **IN RE: SERENA VALDEZ**  
[WSL-2](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.  
6-28-2018    [[66](#)]

SERENA VALDEZ/MV  
HAROUT BOULDOUKIAN

**Final Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order



The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. Pursuant to a motion to value collateral, chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. See 11 U.S.C. § 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). Because a motion to value collateral substantially alters creditors' property rights, it thereby implicates heightened due process requirements. *In re Millspaugh*, 302 B.R. 90, 99 (Bankr. D. Idaho 2003). Given the impact on property interests of the creditor affected, the motion is treated as a contested matter. *Id.* at 101-02 & n.23.

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on FDIC-insured institutions must be made "by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h). "Thus, to meet the requirements of the Rules and comply with considerations of due process, a Rule 3012 motion (either with or without a plan) must be served on the affected creditors in accord with Rule 7004." *Millspaugh*, 302 B.R. at 102 (emphasis added); see also *In re Pereira*, 394 B.R. 501, 506-07 (Bankr. S.D. Cal. 2008) (Chapter 13 plan containing lien stripping proposal must be served on the affected creditor pursuant to Rule 7004). Rule 3012 notice alone will not suffice for the motion. See *Pereira*, 394 B.R. at 506.

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

8. [14-14236](#)-A-13     **IN RE: EDGAR SANTANA**  
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)  
6-25-2018     [[64](#)]

GABRIEL WADDELL

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days

before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,675.00 and reimbursement of expenses in the amount of \$59.96.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1,675.00 and reimbursement of expenses in the amount of \$59.96. The aggregate allowed amount equals \$1,734.96. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$1,734.96 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

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

9. [17-13543](#)-A-13    **IN RE: ELOY RODRIGUEZ AND ANGELA**  
VASS-RODRIGUEZ  
[MHM-2](#)

OBJECTION TO CLAIM OF ALTA ONE CREDIT UNION, CLAIM NUMBER 6  
6-13-2018    [[97](#)]

MICHAEL MEYER/MV  
PATRICK KAVANAGH

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

Respondent and claimant Alta One Credit Union filed proof of claim no. 6 on January 30, 2018. The claim was filed as a split claim: secured in the amount of \$16,000.41 and unsecured in the amount of \$294,560.86.

Two motions to value real property (PK-3 and PK-5) further altered the secured and unsecured portions of this claim. An order on a motion to value two parcels of real property left a secured claim of only \$3,606.90 as to those two parcels. An order on a second motion to value another single parcel of real property left a secured claim of \$0.00 on those properties. Thus, after the motions to value, the respondent's claim was only \$3,606.90 secured and the balance was unsecured.

The debtors, however, filed a prior chapter 7 case in August 13, 2013, and received a discharge of the respondent's claim in that case. So the respondent's claim is unenforceable against the debtors given the prior discharge. But the respondent's secured claim remains as a valid *in rem* claim post discharge. Given the authorities and briefing of the trustee, the court agrees that the respondent's unsecured claim is unenforceable and should be disallowed. This includes the unsecured claim amount in the respondent's proof of claim. And it includes the increased unsecured claim amount resulting from the valuation motions.

In short, the respondent shall have a secured claim of \$3,606.90 and an unsecured claim of \$0.00.

10. [18-10449](#)-A-13     **IN RE: BRUCE/SHARON YEAGER**  
[FJG-2](#)

MOTION TO VALUE COLLATERAL OF ALLY BANK AND ALLY FINANCIAL  
INC.

6-20-2018    [[34](#)]

BRUCE YEAGER/MV  
F. GIST

### **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.*

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2015 Chevrolet Cruze. The respondent creditor has admitted in its proof of claim that the value of the vehicle is \$13,167. The court values the vehicle at \$13,167.

### **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 2015 Chevrolet Cruze has a value of \$13,167. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$13,167 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.

11. [18-10449](#)-A-13     **IN RE: BRUCE/SHARON YEAGER**  
[FJG-3](#)

MOTION TO VALUE COLLATERAL OF U.S. BANK NATIONAL ASSOCIATION  
AND U.S. BANCORP  
6-20-2018    [[40](#)]

BRUCE YEAGER/MV  
F. GIST

**Final Ruling**

The parties have resolved the matter by stipulation. The matter will be dropped from calendar.

12. [18-11049](#)-A-13     **IN RE: ELIZABETH HAGAN**  
[FW-2](#)

MOTION TO CONFIRM PLAN  
6-12-2018    [[28](#)]

ELIZABETH HAGAN/MV  
GABRIEL WADDELL

**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.

13. [18-12766](#)-A-13     **IN RE: ROSA DORSHIMER**  
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
7-18-2018    [[8](#)]

ROSA DORSHIMER/MV  
TIMOTHY SPRINGER

#### **Tentative Ruling**

**Motion:** Extend the 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).

#### **EXTENSION OF THE STAY**

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

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

#### **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.

A motion to extend the automatic stay has been presented to the court in this case. 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, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

14. [18-12767](#)-A-13     **IN RE: CARLOS LEAL**  
[TCS-1](#)

MOTION TO IMPOSE AUTOMATIC STAY  
7-19-2018    [[9](#)]

CARLOS LEAL/MV  
TIMOTHY SPRINGER

#### **Tentative Ruling**

**Motion:** Impose the 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).

#### **IMPOSITION OF THE STAY**

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed." *Id.* (emphases added). However, the motion must be filed no later than 30 days after the filing of the later case. *Id.* The statute does not require the hearing to be completed within such 30-day period.

The court finds that 2 or more cases were pending within the one-year period before the filing of the current bankruptcy case but were dismissed. For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

**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.

A motion to impose the automatic stay has been presented to the court in this case. 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, and the automatic stay of § 362(a) is imposed in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code. The automatic stay shall be effective upon the date of entry of this order.

15. [18-12170](#)-A-13     **IN RE: JOSUE SOLIS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-5-2018    [[15](#)]

THOMAS GILLIS  
FINAL INSTALLMENT PAYMENT OF \$310.00 ON 7/16/18

**Final Ruling**

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

16. [13-12379](#)-A-13     **IN RE: DONALD/PAMELA GARCIA**  
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
7-2-2018    [[74](#)]

MICHAEL MEYER/MV  
PETER BUNTING  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Determination of Final Cure and Payment of Required Postpetition Amounts under Rule 3002.1(h)

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

**Disposition:** Granted

**Order:** Prepared by moving party



## **RULE 3002.1**

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response." Fed. R. Bankr. P. 3002.1(f). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not timely file it. *Id.*

The holder of the claim then has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to agree or dispute whether the debtor has paid in full the amount required to cure the default on the claim and whether the debtor is otherwise current on all payments under § 1322(b)(5).

A motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h). If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bank. P. 3002.1(i).

## **APPLICATION**

The trustee filed a Notice of Final Cure Payment on May 3, 2018. This notice stated that the debtors have paid in full the amount required to cure the prepetition default with respect to the promissory note dated December 20, 2011 secured by a deed of trust on real property located at 29495 Sonora Drive, Santa Nella, CA. It also affirmed that the debtors had completed payments under the plan and that the respondent's mortgage loan was current through April 30, 2018.

Now, the trustee has filed a motion to determine that the default has been cured on the mortgage loan held by BSI Financial Services, Inc., servicer for K. Hovnanian American Mortgage, and that debtors

are current on mortgage payments with this secured creditor through April 30, 2018.

BSI Financial Services, Inc. admits that it never filed a response statement to the trustee's Notice of Final Cure due to inadvertence. It attempts to file a response statement past the 21-day deadline. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure).

But even if the court were to consider the response statement, it would not change the court's ruling granting this motion. The respondent's response statement agrees with the trustee's Notice of Final Cure, admitting that the debtors paid in full the prepetition arrears. And it further admits that the debtors are current with all postpetition payments consistent with § 1322(b)(5) of the Code, including all fees, charges, expenses, escrow and costs, through June 30, 2018. This is a date that goes beyond the date requested by the trustee.

#### **CONCLUSION**

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. It will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining that the debtor has cured the default and paid all postpetition amounts due on the secured claim through June 30, 2018.

17. [18-11979](#)-A-13     **IN RE: LAURA MILLER**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-27-2018    [[27](#)]

MICHAEL MEYER/MV  
STEPHEN LABIAK  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

18. [18-11979](#)-A-13     **IN RE: LAURA MILLER**  
[SL-1](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS  
ATTORNEY(S)  
6-18-2018    [[18](#)]

STEPHEN LABIAK

**Tentative Ruling**

Debtor's counsel has requested payment of the flat \$4,000 fee as a result of not checking the box in section 3.05 of the plan despite attempting to opt for the flat-fee of \$4,000 to be paid through the plan. However, since the filing of this motion, the debtor has filed an amended plan that resolves this problem (opting in under LBR 2016-1(c)). As a result, the court will deny the motion as moot. The court will issue a civil minute order.

19. [15-11284](#)-A-13     **IN RE: ORA HOWARD**  
[EGS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-29-2018    [[110](#)]

BAYVIEW LOAN SERVICING, LLC/MV  
JANINE ESQUIVEL  
EDWARD SCHLOSS/ATTY. FOR MV.

**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 deals with the movant's claim in its additional provisions. Section 6.01 states that the plan does not provide for movant's claim and that "upon confirmation of this plan, all bankruptcy stays are modified to allow Bank of New York Mellon . . . the right under non-bankruptcy law to exercise its rights against its collateral."

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

20. [18-12187](#)-A-13     **IN RE: LISCELA VIRUEL**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER  
7-17-2018    [[15](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS

### **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 and confirmation denied

**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.

The trustee objects to confirmation on grounds that the plan fails to satisfy liquidation. The debtor testified at the § 341 meeting that she had real property located at 4489 W. Princeton Ave., Fresno, CA, that has approximately \$20,000 of non-exempt equity given its current value.

The debtor has filed a non-opposition to the objection, and she has stated her intent to file an amended plan to address this issue. The court will sustain the objection based on failure to satisfy the liquidation test of § 1325(a)(4).

### **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 bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

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 bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

21. [18-11891](#)-A-13     **IN RE: LUCIANO MORALES AND PATRICIA GONZALEZ**  
[TOG-1](#)

MOTION TO CONFIRM PLAN  
6-19-2018    [[13](#)]

LUCIANO MORALES/MV  
THOMAS GILLIS

#### **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.

22. [18-11292](#)-A-13     **IN RE: ANGEL PEREZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-3-2018   [[16](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

**Final Ruling**

The trustee's motion to dismiss is based on the failure to file a motion to value collateral. The valuation motion has now been filed and set for hearing. This dismissal motion will be continued to August 30, 2018, at 9:00 a.m. The motion will be withdrawn if the grounds for the motion have been resolved.

23. [18-12594](#)-A-13     **IN RE: PALMIRA SANCHEZ**  
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL  
6-30-2018   [[8](#)]

PALMIRA SANCHEZ/MV  
THOMAS GILLIS

**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 2005 Saturn Vue. 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 \$3,785.

#### **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 2005 Saturn Vue has a value of \$3,785. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$3,785 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.

24. [16-10697](#)-A-13     **IN RE: DARCY NUNES**  
[TCS-6](#)

MOTION TO VACATE DISMISSAL OF CASE  
7-19-2018    [\[93\]](#)

DARCY NUNES/MV  
TIMOTHY SPRINGER  
DISMISSED: 07/18/2018

**No Ruling**

25. [15-13698](#)-A-13     **IN RE: XIONG HEU AND BAO VANG**  
[TCS-1](#)

MOTION TO MODIFY PLAN  
6-27-2018    [[35](#)]

XIONG HEU/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

### **OPPOSITION TO MODIFICATION**

The trustee objects to the modification because the debtors failed to use the proper form plan. The form used was EDC 3-080 effective 5/1/12. The proper form is EDC 3-080 effective 12/1/17 as required by Fed. R. Bankr. P. 3015(c) and 3015.1.

The court agrees with the trustee that the correct form should have been used. The court will deny the motion.

### **CIVIL MINUTE ORDER**

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

The debtor's motion to modify the chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.