

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

THURSDAY

AUGUST 22, 2013

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.

9:00 a.m.

1. [12-12202](#)-A-13 ISAAC/TERRY PEREZ
GMA-3
ISAAC PEREZ/MV
GEOFFREY ADALIAN/Atty. for dbt.
- OBJECTION TO CLAIM OF
SPECIALIZED LOAN SERVICING,
LLC, CLAIM NUMBER 26
7-2-13 [[57](#)]

Tentative Ruling

Objection: Claim
Disposition: Overruled without prejudice
Order: Civil minute order

A claim objection is a contested matter. See Fed. R. Bankr. P. 3007 advisory committee's note. As a contested matter, the objection must be served in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(b). Service on corporations must be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the objection appears insufficient. The objection was mailed to the attention of John W. Lackey of the firm Buckley Madole, P.C. as an "Authorized Agent." The proof of claim filed by the claimant lists John W. Lackey as the authorized agent. An agent authorized to sign and file a proof of claim in a bankruptcy case is not necessarily authorized to accept Rule 7004 service. It appears that service was made on this agent because his name appears in the signature block of the proof of claim for the creditor. The ruling will be without prejudice to the re-filing of the objection and proper service on the responding party.

2. [10-60208](#)-A-13 JOE/MARY MORENO
DRJ-7
JOE MORENO/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO MODIFY PLAN
6-17-13 [[59](#)]

Tentative Ruling

Motion: Confirm Modified Chapter 13 Plan
Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Plan: Third Modified Chapter 13 Plan, filed June 17, 2013, ECF No. 62
Disposition: Denied, unless debtor pays \$916.00 prior to confirmation
Order: Civil minute order

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 debtor moves to confirm the Third Modified Chapter 13 Plan, filed June 17, 2013, ECF No. 62. Chapter 13 trustee Michael H. Meyer opposes confirmation, as authorized by 11 U.S.C. § 1302(b)(2)(B),(C), arguing that the plan, as proposed, does not satisfy the requirements for confirmation. The Chapter 13 trustee has the better side of the argument and confirmation will be denied, unless the debtor pays \$916.00 to the Chapter 13 trustee prior to the confirmation hearing.

Title 11 of U.S.C. § 1325(a)(6) requires that the debtor be able to make all payments under the plan and otherwise comply with the plan. The proposed plan indicates payments through month 34 of \$72,760.00. But debtor has paid only \$71,844.00, leaving them \$916.00 without explanation as to how this will be paid. As a result, the plan is not feasible.

3. [11-13617](#)-A-13 JUAN/AMPARO SAMANIEGO MOTION TO INCUR DEBT
SL-2 8-7-13 [[50](#)]
JUAN SAMANIEGO/MV
SCOTT LYONS/Atty. for dbt.

No tentative ruling.

4. [11-12120](#)-A-13 CELSO/JENNEN RACCA MOTION TO MODIFY PLAN
SL-3 6-11-13 [[77](#)]
CELSO RACCA/MV
STEPHEN LABIAK/Atty. for dbt.
RESPONSIVE PLEADING, MOTION
WITHDRAWN

Final Ruling

The Third Modified Plan has been withdrawn by the debtors. The matter is dropped from calendar as moot.

5. [13-14031](#)-A-13 ALFRED/MONICA SAUCEDA SW-1
WELLS FARGO BANK, N.A./MV
BERNARD KORNBERG/Atty. for mv. OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
6-28-13 [[17](#)]

Tentative Ruling

Objection: Confirmation of Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Plan: Chapter 13 Plan, filed June 24, 2013, ECF No. 13

Disposition: Overruled

Order: Civil minute order

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).

Secured creditor Wells Fargo Bank objects to confirmation of the debtor's Chapter 13 Plan, filed June 24, 2013, ECF No. 13. That plan fails to treat creditors secured car debt for a 2006 Trailblazer automobile. The objection will be overruled. Section 1325(a)(b) provides, "with respect to each allowed secured claim provided for by the plan..." 11 U.S.C. § 1325(a)(5). The creditors mistakenly reads that section to require the debtor to treat particular secured claims in the plan. It does not. That section merely provides that to the extent the plan does so it must meet certain terms. Those are specified in Section 1325(a)(5)(A)-(C). The objection will be overruled.

6. [11-15739](#)-A-13 CHARLES OVERTON PLF-2
CHARLES OVERTON/MV
PETER FEAR/Atty. for dbt. OBJECTION TO NOTICE OF MORTGAGE
PAYMENT CHANGE
7-24-13 [[58](#)]

Final Ruling

Objection: Notice of Payment Change Filed by JPMorgan Chase Bank, N.A.

Notice: LBR 9014-1(f)(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).

Creditor JPMorgan Chase Bank, N.A. ("Chase") has filed a Notice of Mortgage Payment Change on June 7, 2013. The new total payment shown on the notice is \$2,360.34. The debtor contends that pursuant to a stipulation entered between Chase and the debtor, Chase agreed to accept a payment of \$1,928.20 per month while a modification application was being negotiated. The stipulation resolved the debtor's objection to Chase's claim (Claim No. 15). The stipulation was approved by the bankruptcy court on February 29, 2012.

The stipulation described provides that Chase will accept proposed plan payments of \$1,928.20 while the modification application is pending. The debtor is still in the process of negotiating a loan modification with the creditor. Notice of Mortgage Payment Change increases the mortgage amount to \$2,360.34. Based on the objection and supporting papers, the objection will be sustained and the order may provide that the amount of the mortgage payment will be as agreed in the stipulation.

7. [12-19840](#)-A-13 TRACY/BETSY WALTRIP
BCS-1
BENJAMIN SHEIN/MV
- MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP,
PC FOR BENJAMIN C. SHEIN,
DEBTOR'S ATTORNEY(S), FEE:
\$5,534.00, EXPENSES: \$352.51.
7-24-13 [[18](#)]
- BENJAMIN SHEIN/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Shein Law Group

Compensation approved: \$5,534.00

Costs approved: \$352.51

Aggregate fees and costs approved: \$5,886.51

Retainer held: \$1,501.00

Amount to be paid as administrative expense: \$4,385.51

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 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 for "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. The moving party is authorized to draw on any retainer held.

8. [12-19841](#)-A-13 MARIO/LILIBETH PIZARRO MOTION FOR COMPENSATION BY THE
BCS-1 LAW OFFICE OF SHEIN LAW GROUP,
BENJAMIN SHEIN/MV PC FOR BENJAMIN C. SHEIN,
DEBTOR'S ATTORNEY(S), FEE:
\$7,171.50, EXPENSES: \$406.51.
7-23-13 [[30](#)]

BENJAMIN SHEIN/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Shein Law Group

Compensation approved: \$7,171.50

Costs approved: \$406.51

Aggregate fees and costs approved: \$7,578.01

Retainer held: \$2,831.00

Amount to be paid as administrative expense: \$4,747.01

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 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 for "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. The moving party is authorized to draw on any retainer held.

9. [13-13841](#)-A-13 BRAD/TERESA BOULDEN ASW-1
BANK OF AMERICA, N.A./MV
GLEN GATES/Atty. for dbt.
JARED BISSELL/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
7-1-13 [[27](#)]

Tentative Ruling

Objection: Confirmation of Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Plan: Chapter 13 Plan, filed June 13, 2013, ECF No. 17

Disposition: Overruled

Order: Civil minute order

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).

Secured creditor Bank of America, who holds a trust deed against debtor's residence. The basis for the objection is that the debtor has mis-classified the home mortgage, providing for it in Class 4 (direct pay), instead of Class 1 (paid by the trustee), and providing for a mortgage arrearage. This argument assumes that the debtor was delinquent on the mortgage on the date of the petition, and the objection so states. But no claim has been filed and there is no declaration indicating such an arrearage exists. LBR 9014-1(d)(6) As a result, the objection will be overruled.

10. [11-19746](#)-A-13 DARWIN/MARION ROBERTSON ASW-5
DARWIN ROBERTSON/MV
ADRIAN WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING, PLAN
WITHDRAWN
- MOTION TO MODIFY PLAN
7-17-13 [[77](#)]

Final Ruling

The Plan has been withdrawn by the debtors. The matter is dropped from calendar as moot.

11. [13-11651](#)-A-13 STEPHANIE VALDEZ-GARCIA MOTION TO VALUE COLLATERAL OF
JRL-1 SANTANDER CONSUMER USA
STEPHANIE VALDEZ-GARCIA/MV 7-15-13 [[46](#)]
JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Disposition: Denied without prejudice

Order: Civil minute order

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). Value is defined as "replacement value" on the date of the petition, which means 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.* § 506(a)(2). 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 debtors seek to value collateral consisting of a motor vehicle. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6).

12. [13-14553](#)-A-13 JOHN/DONNA SPATAFORE AMENDED MOTION TO VALUE
JMA-1 COLLATERAL OF BANK OF AMERICA,
JOHN SPATAFORE/MV N.A.
JOSEPH ARNOLD/Atty. for dbt. 7-19-13 [[21](#)]

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Prepared by the 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).

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). 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 responding party'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.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lien holders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Given that the responding party holds both the first, second and third deeds of trust on the collateral, the moving party shall draft the proposed order to specifically identify by book and page, instrument number, or other identifying information, the second deed of trust subject to this order.

13. [13-14553](#)-A-13 JOHN/DONNA SPATAFORE MOTION TO VALUE COLLATERAL OF
JMA-2 BANK OF AMERICA, N.A.
JOHN SPATAFORE/MV 7-19-13 [[16](#)]
JOSEPH ARNOLD/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Prepared by the 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).

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). 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 responding party'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.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lien holders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Given that the responding party holds both the first, second and third deeds of trust on the collateral, the moving party shall draft the proposed order to specifically identify by book and page, instrument number, or other identifying information, the third deed of trust subject to this order.

14. [13-12761](#)-A-13 ADAM/FAVIOLA SUAREZ MOTION TO CONFIRM PLAN
SL-6 7-10-13 [[69](#)]
ADAM SUAREZ/MV
SCOTT LYONS/Atty. for dbt.

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 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)(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.

15. [13-12164](#)-A-13 DONALD/RACHEL FEAGIN CONTINUED MOTION TO CONFIRM
JRL-1 PLAN
DONALD FEAGIN/MV 5-23-13 [[27](#)]
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

The trustee opposed the motion because the debtor's plan reduced a creditor's secured claim to the value of the collateral, but the debtor had failed to file, serve and set for hearing a motion to value collateral. See LBR 3015-1(j). The debtor has filed such motion, however, and the court will grant it on this calendar. The ground for objection has been resolved.

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.

16. [13-12164](#)-A-13 DONALD/RACHEL FEAGIN CONTINUED MOTION TO VALUE
JRL-2 COLLATERAL OF SANTANDER
DONALD FEAGIN/MV CONSUMER USA
6-19-13 [[38](#)]
JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: LBR 9014-1(f)(1) / continued date of the hearing; written opposition required

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$6,650.00

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).

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). Value is defined as "replacement value" on the date of the petition, which means 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.* § 506(a)(2). 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. Based on the supplemental declaration filed since the date of the initial hearing on this matter, the court finds that the debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. In the absence of any opposition to the motion, the court finds that the replacement value of the vehicle is the amount set forth above.

17. [13-11576](#)-A-13 BENITO/MARTHA GALARZA
PPR-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
THOMAS GILLIS/Atty. for dbt.
BONNI MANTOVANI/Atty. for mv.
LIMITED NON-OPPOSITION
- CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
DEUTSCHE BANK NATIONAL TRUST
COMPANY
4-26-13 [[33](#)]

The court intends to discuss the status of this matter with the parties.

18. [13-11576](#)-A-13 BENITO/MARTHA GALARZA
TOG-1
BENITO GALARZA/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
- CONTINUED MOTION TO VALUE
COLLATERAL OF BANK OF AMERICA,
N.A.
4-5-13 [[20](#)]

Final Ruling

The matter is continued to September 12, 2013, at 9:00 a.m. to allow the parties to memorialize settlement.

19. [13-14781](#)-A-13 PHILLIP GIBSON
TCS-1
PHILLIP GIBSON/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO SELL
8-5-13 [[17](#)]

Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(2); written opposition filed by Creditors Larry E. Stone, Carol E. Stone, David M. Stone and Toni J. Stone

Disposition: Granted

Order: Prepared by moving party

Property: 111 N. Mooney Blvd., Tulare, CA

Buyer: Laura Ancheta

Sale Price: \$425,000.00 or higher

Sale Type: Private sale subject to overbid opportunity

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 and enter the default of the responding party. In entering such default, 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).

SALE UNDER § 363(b)

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990). Here, the plan has not yet been confirmed, so the subject property remains property of the estate.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

OPPOSITION BY THE STONES

Creditors Larry E. Stone, Carol E. Stone, David M. Stone and Toni J. Stone ("Creditors") oppose the motion. The grounds for opposition are that (i) there is no binding agreement yet, (ii) the purchase price of \$425,000.00 is unlikely, (iii) that a purchase at the true market value (which is less than the proposed sale price) will not result in a benefit to the estate, and (iv) that no motion to hire a realtor has been filed.

The fact that there is no binding agreement yet is not a reason not to seek court approval. The sale cannot be completed without court authorization, and a party may seek court authorization before finalizing a sale. In any event, a purchase and sale agreement for

property of the estate is subject to the court's approval and cannot become binding until approved.

That the purchase price of \$425,000.00 is unlikely is not a reason not to approve a sale for that amount. By granting the motion, the court is authorizing a sale at such price, not determining whether a sale could occur for such price. Whether the sale will occur at \$425,000.00 or higher will be best determined by this buyer's response to the debtor's counteroffer or the market's response if there is an overbid.

The Stone's contend that a sale at the true market value will not benefit the estate. This argument misses the point, because the court is approving the sale at a price of \$425,000.00 or higher.

A realtor need not be employed under § 327 because the debtor, not the estate, is the one employing the realtor, and the debtor in chapter 13 is not a trustee. See 11 U.S.C. § 327(a). "Section 327 does not apply to the employment of attorneys or other professionals by a chapter 13 debtor." *In re Tirado*, 329 B.R. 244, 250 (Bankr. E.D. Wis. 2005); *In re Bell*, 212 B.R. 654, 656, 657 (Bankr. E.D. Cal. 1997). The debtor, moreover, is vested with possession of property of the estate in Chapter 13. See *id.* § 1306(b).

Lastly, the sale will not be free and clear of liens under § 363(f). Therefore, although the sale is authorized at a particular price, it is not *required*, and the sale will not close if the Stones' lien is not paid in full.

20. [13-10448](#)-A-13 EDWARD TAYLOR
JHW-1
TD AUTO FINANCE LLC/MV
REYNALDO PULIDO/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY TD AUTO FINANCE LLC
8-12-13 [[53](#)]

Final Ruling

Objection: Confirmation of Modified Chapter 13 Plan

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

Plan: First Modified Chapter 13 Plan, filed August 5, 2013, ECF No. 50

Disposition: Overruled

Order: Civil minute order

Secured Creditor TD Auto Finance, LLC objects to confirmation of the First Modified Chapter 13 Plan, filed August 5, 2013, ECF No. 50. The objection is overruled as premature. The debtor has not moved to confirm the First Modified Chapter 13 Plan, filed August 5, 2013, ECF No. 50, as is required by Local Bankruptcy Rule 3015-1(d)(1). Until he does so, the objection is premature.

21. [13-15341](#)-A-13 FOREST/DENEICE JOHNSON
GMA-1
FOREST JOHNSON/MV
GEOFFREY ADALIAN/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
8-13-13 [[11](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor who was not noticed or served with the motion

Order: Prepared by moving party

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.

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). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the *later case* is in good faith as to the creditors to be stayed. *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 and that the automatic stay should be extended. The motion will be granted except as to any creditor who was not noticed or served with the motion.

9:15 a.m.

1. [13-12023](#)-A-13 DONALD/BRENDA SHERMAN
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
MOTION WITHDRAWN
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
8-8-13 [[45](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [13-14031](#)-A-13 ALFRED/MONICA SAUCEDA
MHM-1
MICHAEL MEYER/MV
MOTION WITHDRAWN
MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE
7-24-13 [[36](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [13-11484](#)-A-13 AUDREY CARTER
MHM-1
MICHAEL MEYER/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
8-8-13 [[47](#)]

No tentative ruling.

4. [13-11298](#)-A-13 OSCAR HERNANDEZ AND
MHM-1 LETICIA GIRON
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
8-8-13 [[48](#)]

No tentative ruling.