

**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 28, 2014**

**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. [13-10004](#)-A-13 BRANDON/CASEY HOWARD MOTION TO MODIFY PLAN  
PBB-1 7-22-14 [[30](#)]  
BRANDON HOWARD/MV  
PETER BUNTING/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.

2. [14-12313](#)-A-13 FRANK/JAMIE RODRIGUEZ MOTION TO SELL FREE AND CLEAR  
BCS-1 OF LIENS  
FRANK RODRIGUEZ/MV 8-5-14 [[26](#)]  
BENJAMIN SHEIN/Atty. for dbt.  
NON-OPPOSITION

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted in part (sale), denied in part (free and clear relief)

**Order:** Prepared by moving party and approved as to form and content by the Chapter 13 trustee

**Property:** 711 St. Montelena Drive, Madera, CA

**Buyer:** Jose Rubio

**Sale Price:** \$174,900

**Sale Type:** Private sale subject to overbid opportunity

**Sale Free and Clear of Lien:** Denied; Bank of America, N.A.'s lien may be paid through escrow and released; free and clear relief is unnecessary

**SALE UNDER § 363(b)(1)**

Confirmation of a Chapter 13 plan reverts 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 subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

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.

**PROCEDURE**

The notice of hearing does not contain the name of the broker receiving the commission. Although brokers are not employed in chapter 13 by the debtor, see § 1303, the court prefers that the professionals receiving compensation for services be identified by name in the notice of hearing consistent with the practice in chapter 7 and 11.

3. [14-12915](#)-A-13 JEANETTE TENA  
MHM-1  
MICHAEL MEYER/MV  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS  
7-25-14 [[18](#)]
- TIMOTHY SPRINGER/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

4. [13-15021](#)-A-13 IVY MEDLEY  
TCS-1  
IVY MEDLEY/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
MOTION TO SELL AND/OR MOTION TO  
INCUR DEBT  
8-13-14 [[16](#)]

**Tentative Ruling**

**Motion:** Approve Debtor's Incurring New Debt [Vehicle Loan]

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

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

The debtor seeks to incur new debt to finance the purchase of a vehicle. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing.

Although the court is concerned by the 18.20 percent interest rate being charged, the court will assume that the debtor, who is represented, has obtained the best negotiated rate possible under the circumstances.

The court will grant the motion, and the trustee will approve the order as to form and content.

5. [12-14926](#)-A-13 JOHN/KAREN LYSTAD  
TCS-9  
JOHN LYSTAD/MV  
NANCY KLEPAC/Atty. for dbt.

MOTION TO MODIFY PLAN  
7-10-14 [[139](#)]

### **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.

6. [14-12926](#)-A-13 RODERICK PRYOR  
DRJ-2  
RODERICK PRYOR/MV  
DAVID JENKINS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
CAPITAL ONE RETAIL SERVICES  
7-23-14 [[13](#)]

### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Prepared by the moving party consistent with this ruling's instructions

**Collateral Value:** \$3500.00

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). 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. 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.

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in an amount equal to the value of the collateral shown above and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

7. [14-12433](#)-A-13 RICHARD/MARIANNA RANDALL MOTION TO VALUE COLLATERAL OF  
JDW-1 SANTANDER CONSUMER USA, INC.  
RICHARD RANDALL/MV 7-21-14 [[28](#)]  
JOEL WINTER/Atty. for dbt.

### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Prepared by the moving party consistent with this ruling's instructions

**Collateral Value:** \$9228.00

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). 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. 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.

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in an amount equal to the value of the collateral shown above and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

8. [14-12433](#)-A-13 RICHARD/MARIANNA RANDALL MOTION TO VALUE COLLATERAL OF  
JDW-2 WELLS FARGO BANK N.A.  
RICHARD RANDALL/MV 7-21-14 [[33](#)]  
JOEL WINTER/Atty. for dbt.

### Final Ruling

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Prepared by moving party consistent with this ruling

**Collateral Value:** \$9390 (as stated in the declaration; the motion gives a slightly lower figure)

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). 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. 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.

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in an amount equal to the value of the collateral shown above and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

9. [14-12433](#)-A-13 RICHARD/MARIANNA RANDALL MOTION TO VALUE COLLATERAL OF  
JDW-3 WELLS FARGO BANK, N.A.  
RICHARD RANDALL/MV 7-21-14 [[40](#)]  
JOEL WINTER/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Continued to September 10, 2014 at 9:00 a.m.; a supplemental declaration shall be filed no later than September 3, 2014.

**Order:** Civil minute order

**Collateral Value:** \$135,000.00

**Senior Liens:** \$148,897.69

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).

### **PROCEDURE**

The declaration in support filed by the debtor is unsigned. In this case, the well-pleaded facts warrant relief, but documents purporting to be declarations should be signed by the declarant. LBR 9014-1(d)(6), Fed. R. Civ. P. 56(c)(4); *see also* 28 U.S.C. § 1746.

The court will continue the hearing on the matter to allow the declaration to be signed. If the unsigned declaration is signed and filed, and appears proper in other respects, the court will grant the relief requested as stated in this ruling, and only after the court grants the ruling, the moving party may submit an order pursuant to the instructions below.

### **MERITS**

*If the supplemental declaration is signed, timely filed, and supports the relief requested, the court's ruling will be in substantially the following form as of the continued hearing date:*

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 lienholders 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).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

10. [14-12433](#)-A-13 RICHARD/MARIANNA RANDALL      OBJECTION TO CONFIRMATION OF  
MHM-2      PLAN BY TRUSTEE MICHAEL H.  
MEYER  
7-25-14 [[48](#)]
- JOEL WINTER/Atty. for dbt.

#### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

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

**Disposition:** Continued to September 10, 2014, at 9:00 a.m.

**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 trustee objects to confirmation of the debtors' plan because the plan proposes to reduce Class 2 claims to the value of the collateral securing such claims but the debtors do not yet have orders valuing the property. The court has ruled in the debtors' favor on two of the three motions to value on this calendar. Orders on such objections may resolve the trustee's concerns.

But the plan's valuation of 2 of the Class 2 claims is different from the valuations of the court for that collateral. If the trustee agrees that the valuations may be corrected in the order confirming the plan, and if the third valuation motion is granted as of September 10, 2014, then the court will *conditionally* overrule the objection as moot at the continued hearing date: the condition being that orders are actually issued on all three valuation motions and the order confirming the plan is able to resolve discrepancies between the reduced Class 2 secured claims and the valuations of the collateral securing those claims.

11. [14-11944](#)-A-13 FORTUNATO/KATHERINE MOTION TO CONFIRM PLAN  
SL-1 MORALES 7-8-14 [[25](#)]  
FORTUNATO MORALES/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.

12. [14-12645](#)-A-13 NANCY ADINOLFI MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
7-11-14 [[16](#)]  
DAVID JENKINS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

13. [14-12945](#)-A-13 GEVORG ADAMYAN AND MOTION TO DISMISS CASE FOR  
MHM-1 VARDUHI KRDOTYAN UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
7-25-14 [[28](#)]  
ARIS ARTOUNIANS/Atty. for dbt.

**No tentative ruling.**

14. [14-12945](#)-A-13 GEVORG ADAMYAN AND OBJECTION TO CONFIRMATION OF  
RCO-1 VARDUHI KRDOTYAN PLAN BY JPMORGAN CHASE BANK,  
JPMORGAN CHASE BANK, N.A./MV N.A.  
7-16-14 [[19](#)]
- ARIS ARTOUNIANS/Atty. for dbt.  
KRISTI WELLS/Atty. for mv.

**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:** Overruled for insufficient service  
**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 was not properly served on the debtor. Governed by Rule 9014, an objection to confirmation is a contested matter that must be served. See Fed. R. Bankr. P. 9014(b).

If service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). Under Rule 7004(g), service must be made upon the debtor's attorney by any means authorized under Rule 5(b) of the Federal Rules of Civil Procedure.

Federal Rule of Civil Procedure 5(b) includes service by electronic means if the person has consented in writing. Fed. R. Civ. P. 5(b)(2)(E). Local Bankruptcy Rule 7005-1 permits a registered user of the court's electronic filing system to consent to receive service by electronic means under Federal Rule of Civil Procedure 5(b)(2)(E). This local rule describes how consent is accomplished. The Clerk maintains a roster of names and email addresses of registered users of the court's electronic filing system who have consented to service by electronic means. LBR 7005-1(c). It further specifies the method of service by electronic means upon those who have consented to such service. LBR 7005-1(d).

In this case, service was not properly made because the attorney was not served at the correct email address shown appearing on the roster described in LBR 7005-1(c).

15. [14-11950](#)-A-13 DARLA RAMBONGA CONTINUED MOTION TO DISMISS  
MHM-1 CASE FOR FAILURE TO MAKE PLAN  
MICHAEL MEYER/MV PAYMENTS  
7-22-14 [[37](#)]
- SCOTT LYONS/Atty. for dbt.

**No tentative ruling.**

16. [14-12651](#)-A-13 BRENT EICHELBERGER  
SL-1  
BRENT EICHELBERGER/MV

MOTION TO VALUE COLLATERAL OF  
PORTFOLIO RECOVERY ASSOCIATES,  
LLC  
8-12-14 [[25](#)]

SCOTT LYONS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Prepared by the moving party consistent with this ruling's instructions

**Collateral Value:** \$6249.00

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).

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. 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.

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in an amount equal to the value of the collateral shown above and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

17. [14-13651](#)-A-13 MARTIN MARTINEZ  
RCO-1  
WELLS FARGO BANK, NA/MV  
JONATHAN DAMEN/Atty. for mv. MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-31-14 [[10](#)]

**Final Ruling**

The case dismissed, the motion is denied as moot.

18. [14-11857](#)-A-13 HAN/IN KIM  
MHM-2  
MICHAEL MEYER/MV MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-27-14 [[87](#)]  
H. AHN/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

19. [11-17558](#)-A-13 JULIAN/LEAH DAUGHERTY  
NOTICE OF DEFAULT AND MOTION TO  
DISMISS CASE FOR FAILURE TO  
MAKE PLAN PAYMENTS  
6-11-14 [[152](#)]  
JOHN SARAI/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

20. [14-12959](#)-A-13 LUZ/DIANA ARMENTA  
MHM-1  
PETER BUNTING/Atty. for dbt.  
WITHDRAWN OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
7-25-14 [[22](#)]

**Final Ruling**

The objection withdrawn, the matter is dropped as moot.

21. [09-16170](#)-A-13 RAFAEL VILLAR  
MHM-3  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE AND/OR  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS ,  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-29-14 [[68](#)]

THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

22. [14-12772](#)-A-13 CORINA BARRON  
ALG-2  
CORINA BARRON/MV  
JANINE ESQUIVEL/Atty. for dbt.

MOTION TO CONFIRM PLAN  
7-9-14 [[37](#)]

**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.

23. [13-15181](#)-A-13 LINDSAY LEMONS  
[13-1124](#) GEG-1  
STORMS ET AL V. LEMONS  
GLEN GATES/Atty. for mv.

MOTION FOR AN ORDER EXTENDING  
THE DISCOVERY CUTOFF DATE  
8-14-14 [[17](#)]

*[All hearings in the Lemons case will be called at 10:00 a.m.]*

**No tentative ruling.**

24. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED MOTION TO COMPEL  
GEG-2 AND/OR MOTION FOR SANCTIONS ,  
WAYNE STORMS/MV MOTION FOR EXTENSION OF  
DISCOVERY DATES AND TRIAL DATE  
6-30-14 [[171](#)]
- SCOTT LYONS/Atty. for dbt.  
GLEN GATES/Atty. for mv.
- [All hearings in the Lemons case will be called at 10:00 a.m.]*
- No tentative ruling.**
25. [13-15181](#)-A-13 LINDSAY LEMONS MOTION FOR PRIOR COURT APPROVAL  
GEG-3 FOR CREDITOR TO BRING AN ACTION  
WAYNE STORMS/MV TO SET ASIDE A FRAUDULENT  
TRANSFER UNDER SECTION 548  
8-13-14 [[184](#)]
- SCOTT LYONS/Atty. for dbt.  
GLEN GATES/Atty. for mv.
- [All hearings in the Lemons case will be called at 10:00 a.m.]*
- No tentative ruling.**
26. [13-15181](#)-A-13 LINDSAY LEMONS MOTION FOR AN ORDER EXTENDING  
GEG-4 THE DISCOVERY CUTOFF DATE  
WAYNE STORMS/MV 8-14-14 [[189](#)]  
SCOTT LYONS/Atty. for dbt.  
GLEN GATES/Atty. for mv.
- [All hearings in the Lemons case will be called at 10:00 a.m.]*
- No tentative ruling.**
27. [13-15181](#)-A-13 LINDSAY LEMONS MOTION FOR AN ORDER EXTENDING  
GEG-5 THE DISCOVERY CUTOFF DATE  
WAYNE STORMS/MV 8-14-14 [[196](#)]  
SCOTT LYONS/Atty. for dbt.  
GLEN GATES/Atty. for mv.
- [All hearings in the Lemons case will be called at 10:00 a.m.]*
- No tentative ruling.**

28. [13-16084](#)-A-13 JOHN/NANCY ALVA MOTION TO MODIFY PLAN  
TCS-3 7-18-14 [[56](#)]  
JOHN ALVA/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the motion is denied as moot.

29. [14-12086](#)-A-13 LEON COLE CONTINUED MOTION TO DISMISS  
MHM-1 CASE FOR FAILURE TO MAKE PLAN  
MICHAEL MEYER/MV PAYMENTS  
7-22-14 [[36](#)]  
MICHAEL ARNOLD/Atty. for dbt.

**No tentative ruling.**

30. [12-11895](#)-A-13 BRENDA MOTTA CONTINUED MOTION TO INCUR DEBT  
PLF-2 7-17-14 [[33](#)]  
BRENDA MOTTA/MV  
PETER FEAR/Atty. for dbt.

**Tentative Ruling**

**Motion:** Approve Debtor's Incurring New Debt [Vehicle Loan]

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

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

The debtor seeks to incur new debt to finance the purchase of a vehicle. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment (\$200) and the proposed monthly loan payment of principal and interest (\$300) that would result from obtaining this financing. The debtor's net income available for the plan payment and the new debt is \$656.95.

The debtor's supplemental declaration indicates that all of her business travel is reimbursed in the form of a mileage reimbursement that is paid weekly. The debtor receives approximately \$1260 per month in mileage reimbursement, which is more than enough to cover her business and personal travel expenses of \$960 per month (\$860 for business fuel expense and maintenance, registration, tires, oil changes and other such expenses plus \$100 per month for personal travel) as shown on Schedule J.

The debtor's plan is current and the debtor is not in default. It is necessary for the debtor to replace the vehicle lost in an accident in order for the debtor to maintain her employment. The court will grant

the motion, and the trustee will approve the order as to form and content.

31. [09-17196](#)-A-13 RONALD/LYNETTE BINGHAM CONTINUED MOTION FOR WAIVING  
PLF-6 REQUIREMENT THAT DEBTOR RONALD  
LYNETTE BINGHAM/MV G. BINGHAM FILE DEBTOR'S  
SECTION 11 U.S.C. 1328  
CERTIFICATE  
7-3-14 [[77](#)]
- PETER FEAR/Atty. for dbt.

**Tentative Ruling**

**Motion:** Waiver of Requirement to File § 1328 Certifications

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

**Disposition:** Continued to September 25, 2014, at 9:00 a.m. for compliance with Rule 9037 no later than September 10, 2014

**Order:** Civil minute order

The attorney filing the papers for this matter has not complied with Rule 9037 in filing the declaration and attached exhibit. The attorney shall file an ex parte application to seal and restrict public access to the pertinent filed documents under § 107(c)(1) and Rule 9037(c) or (d) no later than September 10, 2014. A redacted copy of any sealed documents will be filed to replace such sealed documents. The court will continue the hearing on this matter until the attorney files a supplemental declaration that describes what actions were taken to comply with Rule 9037 for all papers filed in connection with this matter.

If the attorney has complied with Rule 9037 as of the continued hearing date, the court will grant the motion.

32. [14-11696](#)-A-13 JOHN/LEA MCDERMOTT MOTION TO DISMISS CASE FOR  
MHM-2 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE , MOTION  
TO DISMISS CASE  
7-16-14 [[28](#)]
- TIMOTHY SPRINGER/Atty. for dbt.

**No tentative ruling.**

33. [14-11696](#)-A-13 JOHN/LEA MCDERMOTT  
TCS-1  
JOHN MCDERMOTT/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA, INC.  
7-28-14 [[32](#)]

### Final Ruling

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Prepared by the moving party consistent with this ruling's instructions

**Collateral Value:** \$10,996.00

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). 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. Although the hanging paragraph was not addressed in the motion or declaration, the attached Schedule D contains the following information for Santander Consumer USA's claim secured by a 2010 Dodge Charger: "Opened 6/30/11." The court interprets this statement to mean that the debt was incurred to purchase the vehicle on June 30, 2011.

As a result, 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.

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in an amount equal to the value of the collateral shown above and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

34. [14-11897](#)-A-13 JUSTINO LEON  
MHM-1  
SCOTT LYONS/Atty. for dbt.
- OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
7-24-14 [[40](#)]

**Final Ruling**

The case dismissed the objection is denied as moot.

35. [13-15181](#)-A-13 LINDSAY LEMONS  
GEG-6  
WAYNE STORMS/MV  
SCOTT LYONS/Atty. for dbt.  
GLEN GATES/Atty. for mv.  
OST 8/24/14
- MOTION FOR FAILURE TO ENGAGE IN  
DISCOVERY  
8-21-14 [[209](#)]

*[All hearings in the Lemons case will be called at 10:00 a.m.]*

**No tentative ruling.**

36. [13-15181](#)-A-13 LINDSAY LEMONS  
GEG-7  
WAYNE STORMS/MV  
SCOTT LYONS/Atty. for dbt.  
GLEN GATES/Atty. for mv.  
OST 8/24/14
- MOTION TO COMPEL  
8-21-14 [[216](#)]

*[All hearings in the Lemons case will be called at 10:00 a.m.]*

**No tentative ruling.**

37. [13-15181](#)-A-13 LINDSAY LEMONS  
SL-2  
LINDSAY LEMONS/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO CONFIRM CHAPTER 13  
PLAN (STATUS CONFERENCE)  
11-26-13 [[79](#)]

[All hearings in the Lemons case will be called at 10:00 a.m.]

**No tentative ruling.**

**9:30 a.m.**

1. [09-16160](#)-A-13 JUAN HURTADO  
[11-1102](#)  
JONES V. HURTADO  
SCOTT BURTON/Atty. for pl.

RESCHEDULED STATUS CONFERENCE  
RE: AMENDED COMPLAINT  
6-16-14 [[203](#)]

**No tentative ruling.**

2. [09-16160](#)-A-13 JUAN HURTADO  
[11-1102](#) BPM-18  
JONES V. HURTADO

RESCHEDULED HEARING RE: MOTION  
TO DISMISS CAUSE(S) OF ACTION  
FROM THIRD AMENDED COMPLAINT  
AND/OR AMENDED MOTION FOR A  
MORE DEFINITE STATEMENT .  
7-1-14 [[210](#)]

BRIAN MOQUIN/Atty. for mv.  
RESCHEDULING ORDER 7/8/14,  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Dismiss/More Definite Statement

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

**Disposition:** Denied

**Order:** Civil minute order

Defendant Juan Hurtado presents a Motion to Dismiss and for a More Definite Statement. Plaintiff Patti Jones opposes the motion.

#### **DISMISS/MORE DEFINITE STATEMENT**

The doctrine of the law of the case excuses the court from considering a matter previously decided by the same court or a higher court. *United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998). Its application is discretionary. *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 888 (9th Cir. 2001).

Here, in response to a Motion to Dismiss directed to the Second Amended Complaint the court made extensive rulings. Civil Minutes, June 21, 2012, ECF #90. Defendant Juan Hurtado now makes the same

arguments with respect to the Third Amended Complaint. The first two cause of action of the Third Amended Complaint to which the motion is directed are all but word for word the same as those causes of action in the Second Amended Complaint. As a result, the court will not revisit its June 21, 2012, ruling.

**CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss and for a More Definite Statement filed by Defendant Juan Hurtado having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that denied and Defendant Juan Hurtado shall file an answer not later than 14 days after service of the Civil Minute Order. No enlargements of time shall be granted. If Defendant Juan Hurtado fails to do so, Plaintiff Patti Jones shall immediately seek the entry of default.

3. [09-16160](#)-A-13 JUAN HURTADO  
[11-1102](#) BPM-18  
JONES V. HURTADO  
SCOTT BURTON/Atty. for mv.

COUNTER MOTION FOR SANCTIONS  
8-14-14 [[224](#)]

**Tentative Ruling**

**Motion:** Sanctions

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

**Disposition:** Denied

**Order:** Civil minute order

Plaintiff Patti Jones prays sanctions. Fed. R. Bankr. P. 9011. But she has not complied with the safe harbor provisions, which is a requisite to such a motion. Fed. R. Bankr. P. 9011(c)(a)(A). See, Certificate of Service, August 14, 2014, ECF # 226.