

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY

**DATE:** JANUARY 9, 2019

**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. [17-12105](#)-A-13     **IN RE: ALEXANDER JOHNSON**  
[PK-5](#)

OBJECTION TO CLAIM OF REVIVER FINANCIAL, LLC, CLAIM NUMBER 2  
11-6-2018    [[101](#)]

ALEXANDER JOHNSON/MV  
PATRICK KAVANAGH

#### **Final Ruling**

The hearing vacated by Order Granting Stipulation, ECF #112, the matter is dropped as moot.

2. [18-13809](#)-A-13     **IN RE: MARY GUTIERREZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
11-7-2018    [[17](#)]

MICHAEL MEYER/MV  
WILLIAM OLCOTT

#### **No Ruling**

3. [18-13911](#)-A-13     **IN RE: STEFANIE JACOBSON**  
[MHM-2](#)

MOTION TO DISMISS CASE  
11-7-2018    [[19](#)]

MICHAEL MEYER/MV  
NEIL SCHWARTZ  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

4. [18-12814](#)-A-13     **IN RE: JIMMY JAMES**  
[NSV-2](#)

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.  
12-5-2018    [[42](#)]

JIMMY JAMES/MV  
LUKAS JACKSON

**Final Ruling**

The motion will be denied without prejudice. The motion cannot be granted. First, notice deficiencies. The notice and motion must be filed as separate documents. LBR 9014-1(d)(3)(B)(4). More importantly, the notice must advise the respondent when opposition is due and must otherwise comply with LBR 9014-1(d)(3)(B). Second, motion is not supported by admissible evidence as to the applicability, or inapplicability, of the § 1325(a). And hence, the motion fails to state a prima facie case for relief. A civil minute order will issue.

5. [18-14217](#)-A-13     **IN RE: BECKY BALDERAS**  
[WDO-1](#)

MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC  
11-28-2018    [[13](#)]

BECKY BALDERAS/MV  
WILLIAM OLCOTT

**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 2002 Nissan Altima. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$1,389.00.

#### **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 202 Nissan Altima has a value of \$1,389.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1,389.00 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.

6. [18-14917](#)-A-13     **IN RE: JONATHAN YU**  
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
12-26-2018    [\[10\]](#)

JONATHAN YU/MV  
PETER BUNTING

### **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.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Here, the previous case was dismissed for failure to payments under a confirmed plan and, hence, a presumption of a lack of good faith arises. But the debtor has rebutted that presumption by clear and convincing evidence by (1) paying the filing fee in full; (2) filing the schedules and statements, as well as plan, in a timely fashion and without extension; (3) demonstrating steady and sufficient income to fund a plan, Schedules I and J, December 13 2018, ECF # 13; and (4) proposing a plan that pays unsecured creditors in full. 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.

7. [18-14326](#)-A-13     **IN RE: RICHARD NELSON**  
[JM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ONEMAIN FINANCIAL  
SERVICES, INC.  
12-26-2018    [[32](#)]

ONEMAIN FINANCIAL SERVICES,  
INC./MV  
JAMES MACLEOD/ATTY. FOR MV.

**No Ruling**

8. [18-14326](#)-A-13     **IN RE: RICHARD NELSON**  
[MWP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR PSF CA 1, LLC  
12-17-2018    [[24](#)]

PSF CA 1, LLC/MV  
MARTIN PHILLIPS/ATTY. FOR MV.

**No Ruling**

9. [16-12428](#)-A-13     **IN RE: SONIA GONZALEZ**  
[RSW-4](#)

MOTION TO MODIFY PLAN  
11-29-2018    [\[57\]](#)

SONIA GONZALEZ/MV  
ROBERT WILLIAMS

#### **Final Ruling**

**Motion:** Modify Confirmed Chapter 13 Plan

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

**Disposition:** Denied as moot

**Order:** Civil minute order

#### **THE MODIFIED PLAN HAS BEEN SUPERSEDED**

Chapter 13 debtors may modify a confirmed plan before completion of payments under the plan. 11 U.S.C. § 1329(a). This motion requests approval of a modified plan under § 1329(a). But the requested modified plan has been superseded by another modified plan. Because another modified plan has superseded the modified plan to be confirmed by this motion, the court will deny the motion 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 motion to modify the plan is denied as moot.

10. [18-13030](#)-A-13     **IN RE: JESUS PORTILLO-VAQUERO AND ELSA**  
GONZALEZ-PORTILLO  
[PK-2](#)

MOTION TO CONFIRM PLAN  
11-9-2018    [\[45\]](#)

JESUS PORTILLO-VAQUERO/MV  
PATRICK KAVANAGH

#### **No Ruling**

11. [18-13030](#)-A-13     **IN RE: JESUS PORTILLO-VAQUERO AND ELSA GONZALEZ-PORTILLO**  
[PK-3](#)

CONTINUED MOTION TO VALUE COLLATERAL OF WILSHIRE COMMERCIAL  
CAPITAL, LLC  
11-9-2018    [\[53\]](#)

JESUS PORTILLO-VAQUERO/MV  
PATRICK KAVANAGH

**No Ruling**

12. [18-13030](#)-A-13     **IN RE: JESUS PORTILLO-VAQUERO AND ELSA GONZALEZ-PORTILLO**  
[TJS-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY PERITUS PORTFOLIO  
SERVICES II, LLC  
11-19-2018    [\[78\]](#)

PERITUS PORTFOLIO SERVICES II,  
LLC/MV  
PATRICK KAVANAGH  
TIMOTHY SILVERMAN/ATTY. FOR MV.

**No Ruling**

13. [17-14537](#)-A-13     **IN RE: FREDDIE/EVELYN GARCIA**  
[RSW-2](#)

MOTION TO MODIFY PLAN  
11-13-2018    [\[30\]](#)

FREDDIE GARCIA/MV  
ROBERT WILLIAMS  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.



14. [17-14537](#)-A-13     **IN RE: FREDDIE/EVELYN GARCIA**  
[RSW-2](#)

AMENDED MOTION TO MODIFY PLAN .  
12-14-2018    [\[38\]](#)

FREDDIE GARCIA/MV  
ROBERT WILLIAMS

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 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)(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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

15. [18-13343](#)-A-13     **IN RE: EUGENE/ANDREA WILLIAMS**  
[LKW-2](#)

MOTION TO CONFIRM PLAN  
11-19-2018    [[34](#)]

EUGENE WILLIAMS/MV  
LEONARD WELSH

**Final Ruling**

**Motion:** Confirmation of Chapter 13 Plan

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**THE MODIFIED PLAN HAS BEEN SUPERSEDED**

Chapter 13 debtors may modify a plan before completion of payments under the plan. 11 U.S.C. § 1329(a). This motion requests approval of a modified plan under § 1329(a). But the requested modified plan has been superseded by another modified plan. Because another modified plan has superseded the modified plan to be confirmed by this motion, the court will deny the motion 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 motion to modify the plan is denied as moot.

16. [18-13845](#)-A-13     **IN RE: CURTIS ROSS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
11-7-2018    [[20](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS

**No Ruling**

17. [18-13657](#)-A-13     **IN RE: MARTINA DUL**  
[RSW-2](#)

MOTION TO CONFIRM PLAN  
11-20-2018    [[27](#)]

MARTINA DUL/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING WITHDRAWN,

**Final Ruling**

This matter is continued to February 6, 2019, at 9:00 a.m.

18. [18-11763](#)-A-13     **IN RE: JASON/KIMBERLY WHITLOCK**  
[MHM-5](#)

MOTION TO DISMISS CASE  
11-9-2018    [[82](#)]

MICHAEL MEYER/MV  
RICHARD STURDEVANT

**No Ruling**

19. [18-11763](#)-A-13     **IN RE: JASON/KIMBERLY WHITLOCK**  
[RS-2](#)

MOTION TO CONFIRM PLAN  
11-26-2018    [[87](#)]

JASON WHITLOCK/MV  
RICHARD STURDEVANT

**No Ruling**

20. [17-14665](#)-A-13     **IN RE: VICKI/ANGELA VALENTYN**  
[RSW-1](#)

MOTION TO MODIFY PLAN  
11-14-2018    [\[48\]](#)

VICKI VALENTYN/MV  
ROBERT WILLIAMS

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 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)(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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

21. [18-14166](#)-A-13     **IN RE: DOUGLAS NEWHOUSE**  
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.  
11-27-2018    [[19](#)]

BANK OF AMERICA, N.A./MV  
D. GARDNER  
WENDY LOCKE/ATTY. FOR MV.

**No Ruling**

22. [18-14166](#)-A-13     **IN RE: DOUGLAS NEWHOUSE**  
[DMG-1](#)

MOTION TO VALUE COLLATERAL OF CHASE BANK  
12-4-2018    [[23](#)]

DOUGLAS NEWHOUSE/MV  
D. GARDNER

**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 2013 Volkswagen Beetle TDI. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$5,000.00.

#### **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 2013 Volkswagen Beetle TDI has a value of \$5,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$5,000.00 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.

23. [18-14166](#)-A-13     **IN RE: DOUGLAS NEWHOUSE**  
[DMG-2](#)

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.  
12-10-2018     [[28](#)]

DOUGLAS NEWHOUSE/MV  
D. GARDNER

**No Ruling**

24. [18-13672](#)-A-7     **IN RE: ARTURO/EMILIA GONZALEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
11-14-2018    [[42](#)]

MICHAEL MEYER/MV  
PATRICK KAVANAGH  
CONVERTED 11/20/18

**Final Ruling**

The case converted to chapter 7, the matter is dropped as moot.

25. [18-14477](#)-A-13     **IN RE: LISA BOUDREAULT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-6-2018    [[24](#)]

PHILLIP GILLET  
FINAL INSTALLMENT PAYMENT OF \$310.00 ON 12/14/18

**Final Ruling**

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

26. [18-13981](#)-A-13     **IN RE: JENNIFER JENKINS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
11-9-2018    [[14](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS

**No Ruling**

27. [15-12283](#)-A-13     **IN RE: RYAN MCKAY**  
[PK-6](#)

MOTION TO MODIFY PLAN  
12-3-2018    [[103](#)]

RYAN MCKAY/MV  
PATRICK KAVANAGH

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 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)(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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.



28. [18-13295](#)-A-13     **IN RE: PATRICK/MARIBETH TABAJUNDA**  
[RSW-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF AMERICREDIT  
FINANCIAL SERVICES, INC.  
11-16-2018    [\[23\]](#)

PATRICK TABAJUNDA/MV  
ROBERT WILLIAMS  
RESOLVED BY STIPULATION & ORDER ECF #56

**Final Ruling**

The matter resolved by stipulation and order, ECF #56, the matter is dropped as moot.

29. [16-12498](#)-A-13     **IN RE: PAMELA SUNIGA**  
[RSW-4](#)

MOTION TO MODIFY PLAN  
11-7-2018    [\[67\]](#)

PAMELA SUNIGA/MV  
ROBERT WILLIAMS

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 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)(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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by

ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.